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ABSTRACT

This document explains provisions of the 1997 amendments to the Individuals with Disabilities Education Act (IDEA), Public Law 105-17, and is divided into 16 topics, most of which address specific sections of the law. For each topic, the following is provided: overview information, additional information presented in a question and answer format, relevant statements from the Congressional committee reports submitted while IDEA was being considered, and a list of resources. The topics covered are: (1) general questions; (2) parental involvement; (3) developmental delay; (4) cultural diversity; (5) evaluation and reevaluation; (6) the Individualized Education Program; (7) related services and technology; (8) early childhood; (9) procedural safeguards; (10) mediation; (11) behavior and discipline; (12) state and local fiscal management responsibilities; (13) private school placements; (14) performance goals, indicators, assessments, what the state has to do; (15) personnel preparation; and (16) national support programs. Two additional sections provide a summary of IDEA, an index of topics located in the legislation, and a list of general resources for IDEA. (DB)

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IDEA 1997

Let's Make It Work

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The Council for Exceptional Children, a private nonprofit membership organization, was established in 1922. CEC is an active network of 59 State/Provincial Federations, 900 Chapters, 17 Specialized Divisions, and 275 Subdivisions with reach in over 40 countries.

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The Council for Exceptional Children is a major publisher of special education literature and produces a comprehensive catalog semiannually. Journals such as *TEACHING Exceptional Children* (published six times a year) and *Exceptional Children* (published quarterly) and a newsletter, *CEC Today*, reach over 100,000 readers and provide a wealth of information on the latest teaching strategies, research, resources, and special education news.

IDEA 1997: Let's Make It Work

This question and answer document addresses the many issues of concern to practitioners and parents of children with disabilities. The book is divided into 18 sections including a full summary of the law, an index of topics located in the law, and a resource section of agencies and Web sites that offer additional information and support. In order to add depth to each of the sections, selected resources have been identified from *Exceptional Children, TEACHING Exceptional Children*, and other publications that deal with research and best practices on specific topics. The bound version makes an ideal reference for teachers in training, parents, and practitioners. The loose-leaf version can serve as a personal file on IDEA that can be added to as regulations and local resources are developed. *IDEA 1997: Let's Make It Work* reflects CEC's strategic plan goal to provide information on policy, emerging policy issues, and CEC positions to CEC members and other relevant audiences on a timely basis.

The Council for Exceptional Children
1920 Association Drive
Reston, Virginia 20191-1589
Voice: 703/620-3660
TTY: 703/264-9446
FAX: 703/264-9494
E-mail: cecpubs@cec.sped.org
URL: http://www.cec.sped.org

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Let's Make It Work

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Introduction

On June 4, 1997, President Clinton signed into law the Individuals with Disabilities Education Act Amendments of 1997, often referred to as IDEA 97. IDEA is a powerful civil rights law with a long and successful history. More than 20 years ago, Congress passed Public Law 94-142, a law that gave new promises, and new guarantees, to children with disabilities. IDEA has been a very effective law that has made significant progress in addressing the problems that existed in 1975 when P.L. 94-142, the Education for All Handicapped Children Act was passed. With the recent reauthorization, the IDEA Amendments of 1997 show that Congress is strongly committed to the right to a free appropriate public education (FAPE) for all children with disabilities. Close to 5.8 million children with disabilities are now receiving special education and related services.

IDEA 97, also known as P.L. 105-17, made significant changes to many parts of IDEA which will impact the way that parents, teachers, and administrators go about the important work of ensuring quality education and early intervention for children with disabilities. However, the new law continues to affirm the basic principles established in 1975 in P.L. 94-142, such as:

- Guaranteeing the availability of special education programming to children and youth with disabilities who require it;
- Assuring that decisions made about providing special education to children and youth with disabilities are fair and appropriate;
- Establishing clear management and auditing requirements and procedures regarding special education at all levels of government; and
- Financially assisting the efforts of state and local governments through the use of federal funds.

Federal research shows that investment in the education of children with disabilities from birth throughout their school years has rewards and benefits, not only for children with disabilities and their families, but for our whole society. We have proven that promoting educational opportunity for our children with disabilities directly impacts their ability to live independent lives as contributing members of society. Today, infants and toddlers with disabilities receive early intervention services; most children with disabilities attend school together with children without disabilities; and young people with disabilities learn study skills, life skills, and work skills that will allow them to be independent and productive adults. The number of young adults enrolled in postsecondary education has tripled, and the unemployment rate for individuals with disabilities in their twenties is almost half that of their older counterparts.

This document has been prepared to assist teachers, parents, and administrators in understanding what IDEA now requires and how the provisions of the law impact on services and programs for children with disabilities. It highlights IDEA 97's new emphasis on improving results for children with disabilities while maintaining the importance of the procedural safeguards that have always been in place for children and their families. This document does not address all of the changes to IDEA that were made by the reauthorization, but highlights those that CEC believes are the most critical to your work. Readers are encouraged to review the law itself for additional guidance. See CEC's web site at http://www.cec.sped.org, and go to the public policy page.

This document is divided into 16 topics. For each topic, the following is provided:

- Overview information about the requirement;
- Questions and answers designed to provide additional information on the topic;
- Relevant statements from the Congressional committee reports that were submitted to the Congress when IDEA was being considered; and
- A list of resources (articles, books, Web sites, etc.) that can provide additional information related to the implementation of the specific provision. General resources related to IDEA can be found under the Resources tab.

In addition to the law, you will want to review the implementing regulations issued by the U.S. Department of Education's Office of Special Education Programs (OSEP), which can be found at CEC's Web site at http://www.cec.sped.org

SECTION

1

General Questions

Q. What is Public Law 105-17?

A. Public Law (P.L.) 105-17, the Individuals with Disabilities Education Act Amendments of 1997, is legislation passed by the United States Congress and signed into law by President William Clinton on June 4, 1997. The "105" indicates that this law was passed by the 105th Congress. The "17" indicates that this law was the 17th law passed by the 105th Congress signed into law by the President.

Q. What are the purposes of P.L. 105-17?

A. P.L. 105-17 can be said to have five purposes:

- Give professionals, especially teachers, more influence and flexibility, and school administrators and policymakers lower costs in the delivery of education to children with disabilities.
- Enhance the input of parents of children with disabilities in the decision making that affects their child's education.
- Make schools safer.
- Place the emphasis on what is best educationally for children with disabilities rather than on paperwork for paperwork's sake.
- Consolidate and target discretionary programs to strengthen the capacity of America's schools to effectively serve children, including infants and toddlers, with disabilities.

Q. What is Section 504?

A. Section 504 is the basic civil rights provision with respect to terminating discrimination against America's citizens with disabilities. Section 504 was enacted through the legislative vehicle of P.L. 93-112, the Vocational Rehabilitation Act Amendments of 1973, and has been amended several times since then. Although it is brief in actual language, its implications are far reaching. The statute reads:

> No otherwise qualified handicapped individual in the United States shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. (29 U.S.C. 794)

Q. To whom do P.L. 105-17 and Section 504 apply?

A. P.L. 105-17 applies to all children with disabilities, ages birth through 21, who meet specific eligibility requirements under that law. Section 504 applies to all Americans with disabilities regardless of age. Section 504, therefore, applies to all children with disabilities ages birth through 21 with respect to their public education, both from the standpoint of the guarantee of an appropriate special education and from the standpoint of sheer regular program accessibility. While it is true that all children with disabilities who are eligible for services under P.L. 105-17 are also protected under Section 504, it is equally important to recognize that children who are not eligible under P.L. 105-17 may indeed be children with disabilities who are eligible for protection under Section 504. Close coordination has therefore been maintained between P.L. 105-17 provisions and regulations and the Section 504 regulations.

Q. Was there a forerunner to P.L. 105-17?

A. Many of the major provisions of P.L. 105-17, such as the guarantee of due process procedures and the assurance of education in the least restrictive environment, were required in earlier federal laws, including P.L. 91-230, the Education of the Handicapped Act (EHA); P.L. 93-380, the Education Amendments of 1974 (enacted August 21, 1974); and P.L. 94-142, the Education for All Handicapped Children Act, enacted November 29, 1975. There have been a series of amendments to the EHA from 1979 through 1994, one of which created a new Part H in the EHA. Under P.L. 99-457, Part H provided funds for state programs in early intervention services for infants and toddlers with disabilities from birth through 2 years of age. The EHA amendments of 1990, P.L. 101-476, renamed the statute as the Individuals with Disabilities Education Act (IDEA).

Q. How are children with disabilities defined for purposes of P.L. 105-17?

A. Children with disabilities are defined by the Act as a child:

- With mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and
- Who, by reason thereof, require special education and related services.

(*Note:* Children ages 3 through 9 may be defined as having developmental delays.)

This definition establishes a two-pronged criterion for determining child eligibility under the Act. The first is whether the child actually has one or more of the disabilities listed. The second is whether the child requires special education and related services. Not all children who have a disability require special education; many are able to and should attend school without any program modification.

Q. What is the current federal definition of specific learning disability under P.L. 105-17?

A. The Act defines "specific learning disability" as:

> a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. This term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. This term does not include a learning problem that is primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

It is most important to take note of the prohibition against environmental, cultural, or economic disadvantage—because of the wide ranging implications with respect to the larger population of children who do not have disabilities, but may experience learning difficulties in school.

Q. If a child has one or more of the disabilities listed in the preceding definition and also requires special education and related services, how does P.L. 105-17 define such special education?

A. Special education is defined in P.L. 105-17 as:

> specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including classroom instruction, home instruction, instruction in hospitals and institutions and in other settings, and instruction in physical education.

The key phrase in the above definition is "specially designed instruction . . . to meet the unique needs of a child with a disability." Reemphasized, special education, according to statutory definition, is defined as being "special" and involving instruction that is designed and directed to meet the unique needs of a child with a disability. For many children, therefore, special education will not be the totality of their education. Furthermore, this definition clearly implies that special education proceeds from the basic goals and expected outcomes of general education. Thus, for example, intervention with a child does not occur because he or she has mental retardation but because the child has a unique educational need that requires specially designed instruction.

Q. How are related services defined in P.L. 105-17?

A. Of equal importance is to understand the concept of related services, which is defined in the Act as:

> transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

The key phrase here is "as may be required to assist a child with a disability to benefit from special education." This leads to a clear progression: A child has a disability because he or she requires special education and related services; special education is the specially designed instruction required to meet the child's unique needs; and related services are those additional services needed for the child to benefit from special education instruction.

SECTION

2

Parental Involvement

Section 613 and throughout

The IDEA Amendments of 1997 significantly enhanced the role of parents in the special education process. More than 20 years of research and experience demonstrated that the education of children with disabilities is made more effective by strengthening the role of parents and ensuring that families of such children have meaningful opportunities to participate in the education of their children at school and at home. This expansion of parental involvement is evident throughout the Act. For a full discussion of parental involvement in specific areas of IDEA, please refer to sections such as evaluation/reevaluation, private school placements, individualized education programs (IEPs), mediation, procedural safeguards, and behavior and discipline. The following section highlights specific requirements related to parent involvement in the development and implementation of special education policy and procedures.

Q. What role do parents play in the evaluation/reevaluation and eligibility process under IDEA?

A. As part of the initial evaluation, the parents of the child provide evaluations and other information as well as input to help determine what additional information, if any, are needed. In addition, when conducting an evaluation, information provided by the parent must be used.

The determination of whether the child is a child with a disability shall be made by a team of qualified professionals and the parent of the child. A copy of the evaluation report and the documentation of determination of eligibility will be given to the parent.

A reevaluation must be conducted for a child with a disability if conditions warrant a reevaluation, or if the child's parent or teacher requests it, but at least once every 3 years. The process of reevaluation must include review of the existing data on the child and information provided by the parent. In addition, input from the parent is used to help determine what additional information, if any, is needed. When conducting a reevaluation, information provided by the parent must be used.

If it is determined that no additional evaluation data are needed by the IEP team (which includes the parents and other qualified professionals), the local education agency (LEA) must notify the child's parents. The notice must include a statement of the determination that no additional data are needed and the reasons for it and the parent's right to request an assessment to determine whether the child continues to be a child with a disability.

Q. What requirements are there in IDEA for parental notice and consent in relation to the evaluation and reevaluation process?

A. In general, written prior notice is required whenever an agency proposes to initiate or change—or refuses to initiate or change—the identification, evaluation, or educational placement of the child, or the provision of a FAPE.

Specifically, the LEA must provide notice to the parents of a child with a disability that describes any evaluation procedures the agency proposes to conduct. When an agency is proposing to conduct an initial evaluation, informed consent must be obtained from the parent of the child before the evaluation is conducted. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services. If the parent refuses consent for the evaluation, the agency may continue to pursue an evaluation by utilizing the mediation and due process procedures under Sec. 615, except to the extent inconsistent with state law relating to parental consent.

The LEA must obtain parental consent prior to conducting any reevaluation of a child with a disability except that consent need not be obtained if the LEA can demonstrate that it had taken reasonable measures to obtain such consent and the child's parent failed to respond.

Q. How does IDEA ensure parental input in the development of state and local special education policy and procedures?

A. Prior to the adoption of any policies and procedures related to IDEA, each state must ensure there are public hearings and an opportunity for comment by the general public, including individuals with disabilities and parents of children with disabilities. A majority of the members of each state special education advisory panel must be individuals with disabilities or parents of children with disabilities.

Each LEA must make available to parents of children with disabilities and the general public all documents related to the LEA's eligibility for funding under IDEA. Parents of children with disabilities must be included on the school-based standing panel for any school that has been permitted to implement a school-based improvement plan. The LEA must ensure that parents of children with disabilities are involved in the design, evaluation, and where appropriate, the implementation of school-based improvement plans. One of the required criteria used by an LEA to approve a specific school's improvement plan must be that a majority of the parents on the standing panel agree in writing to the plan.

Q. How often are school districts required to report to parents on their child's progress?

A. The IEP must include a statement of how the child's parents will be regularly informed (by such means as periodic report cards), at least as often as parents are informed of their nondisabled children's progress of:

- Their child's progress toward the annual IEP goals; and
- The extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.

Q. Other than the fact that the parent is a member of the IEP team, what other IEP requirements relate specifically to parents?

A. At their discretion, parents may include other individuals on the IEP team who have knowledge or special expertise regarding the child, including related services personnel as appropriate. In developing the IEP, the team must consider the concerns of the parents for enhancing the education of their child. When the IEP team is reviewing and revising the IEP, the team must address information about the child provided to, or by, the parents. The parents of a child with a disability must be a member of any group that makes decisions on the educational placement of their child. If the state and LEA agree, the parents may agree to use an individualized family service plan (IFSP) instead of an IEP for their preschool child with a disability.

Q. What procedural safeguards are available for children with disabilities and their parents under IDEA?

A. For a discussion of the procedural safeguards that are available please refer to the section titled Procedural Safeguards. The following is a condensed list of procedural safeguards:

- Opportunity to examine records;
- Surrogate parents to represent children with disabilities;
- Written prior notice;
- Notice in native language of the parents, unless clearly not feasible to do so;
- Mediation;
- Due process hearings;
- Procedures requiring the parent to provide notice of the complaint; and
- Procedures requiring an state education agency (SEA) to provide a model form to parents for filing a complaint.

In addition, parents of a child with a disability may:

- Examine all records relating to the child;
- Participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of a FAPE to the child; and
- Obtain an independent educational evaluation.

Resources on Parent Involvement

Chavez, J. A., Lopez, D. P., & Burton, L. F. (1991). Communication perceptions between Hispanic parents of learning handicapped children and special education teachers. In L. M. Malave & G. Duquette (Eds.). *Language, culture, & cognition* (pp. 190-197). Greenwich, CT: Greenfield Books.

Vincent, L. J., & McLean, M. E. (1996). Family participation. In S. L. Odom & M. E. McLean (Eds.). *Early intervention/early childhood special education: Recommended practices* (pp. 59-76). Austin, TX: Pro-Ed.
This article elaborates on specific educational practices in early intervention and early childhood special education recommended by a task force of The Council for Exceptional Children's Division for Early Childhood.

Use this space to add additional resources appropriate for your state and local district.

SECTION

3

Developmental Delay

Section 612

IDEA, Part B defines a child with a disability as:

> a child with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (hereinafter referred to as "emotional disturbance"), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities, and who, by reason thereof, needs special education and related services.

In addition, at the discretion of the SEAs and LEAs, the definition of a child with a disability, for a child ages 3 through 9, may include a child experiencing developmental delays, as defined by the state and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and who, by reason thereof, needs special education and related services.

Q. What is this provision intended to do?

A. This authority is intended to allow the provision of special education and related services for preschool children and children in the early grades without the necessity of designating a diagnostic category for any particular child.

Q. If the SEA and LEA elect to utilize this developmental delay option, must the availability of the other categories be retained for children ages 3 through 9?

A. Yes. Depending on an individual child's disability and resulting needs, the use of a particular category for some young children may be appropriate.

Comments from the Senate Committee

The use of a specific disability category to determine a child's eligibility for special education and related services frequently has led to the use of the category to drive the development of the child's IEP and placement to a greater extent than the child's needs. In the early years of a child's development, it is often difficult to determine the precise nature of the child's disability. Use of "developmental delay" as a part of a unified approach will allow the special education and related services to be directly related to the child's needs and prevent locking the child into an eligibility category which may be inappropriate or incorrect, and could actually reduce later referrals of children with disabilities to special education. U.S. Congress, *Individuals with Disabilities Education Act Amendments of 1997,* Senate Report No. 105-17, p. 6.

Resources on Developmental Delay

Kilgo, J., Danaher, J., McLean, M., McCormick, K., Smith, B., and Schael, J. (1996). *Developmental Delay as an eligibility category.* A concept paper by the Division for Early Childhood of The Council for Exceptional Children.

See DEC's Web page at www.soe.uwm.edu/dec/devdelpr.html

Use this space to add additional resources appropriate for your state and local district.

SECTION

4

Cultural Diversity

Section 687, 618, 615, and throughout

America's racial profile is rapidly changing. Between 1980 and 1990, the rate of increase in the population for White Americans was 6%, while the rate of increase for racial and ethnic minorities was much higher: 53% for Hispanics, 13.2% for African Americans, and 107.8% for Asians. The Federal government must be responsive to the growing needs of an increasingly more diverse society. A more equitable allocation of resources is essential for the Federal government to meet its responsibility to provide an equal educational opportunity for all individuals.

By the year 2000, this nation will have 275,000,000 people, nearly one of every three of whom will be either African American, Hispanic, Asian American, or Native American. Taken together as a group, minority children are comprising an ever larger percentage of public school students. Large-city school populations are overwhelmingly minority, for example: for fall 1993, the figure for Miami was 84%; Chicago, 89%; Philadelphia, 78%; Baltimore, 84%; Houston, 88%; and Los Angeles, 88%.

Q. What is the definition of "native language"?

A. The term "native language," if used with reference to an individual of limited English proficiency, means the language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child.

Q. When must notification be provided in the child or parent's native language?

A. Notification in the child's or parent's native language must be used in the prior notice, procedural safeguards notice, and evaluation sections of IDEA (Sections 614 and 615) unless it is clearly not feasible to do so.

Q. Are there new reporting requirements that relate to cultural diversity required of the states?

A. Yes. Each state that receives assistance shall provide data each year to the Secretary on the number of children with disabilities, by race, ethnicity, and disability category, who are receiving a FAPE, early intervention services, and who are participating in general education.

Q. Is there a prioritized consideration with respect to limited English proficiency in determining eligibility for special education services included in IDEA 1997?

A. Yes. In making a determination of eligibility, a child shall not be determined to be a child with a disability if the determinant factor for such determination is lack of instruction in reading or math or limited English proficiency.

Q. Is there attention to the issues of disproportionality in the new law?

A. Yes. Each state that receives assistance shall provide for the collection and examination of data to determine if significant disproportionality based on race is occurring in the state with respect to the identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment and the placement in particular educational settings of these children.

Q. Are the states required to take action when a determination is made that disproportionality is occurring?

A. In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of such children, the state shall provide for the review and, if appropriate, revision of the policies, procedures, and practices used in such identification or placement to ensure that such policies, procedures, and practices comply with the requirements of this Act. Note: The reader needs to be advised that in November 1997, the Congress authorized a 2-year study of the disproportionate number of students from minority backgrounds who are receiving the support of special education. This study is to be conducted by the National Academy of Sciences.

SOURCE: *IDEA 1997: LET'S MAKE IT WORK*, 1998, RESTON, VA: THE COUNCIL FOR EXCEPTIONAL CHILDREN · 13

Resources on Cultural Diversity

Baca, L. M., & Cervantes, H.T. (Eds.). (1989). *The bilingual special education interface* (2nd ed.). Columbus, OH: Merrill.

This book stresses the importance of an interface between bilingual education and special education. It addresses the major needs of the exceptional child with limited skills in English and provides information on models, curriculum, and strategies for better educating this population of students.

Baca, L. M., & Almanza, E. (1991). *Language minority students with disabilities.* 56pp. #P357. Reston, VA: The Council for Exceptional Children.

When working with students whose primary language is not English, develop an understanding of how prereferral intervention, proper assessment of children, and appropriate instruction relate to their IEP.

Hyen, J., & Fowler, S. (1995). Respect, cultural sensitivity, and communication: Promoting participation by Asian families in the individualized family service plan. *TEACHING Exceptional Children, 28*(1), 25-28.

Suggestions for enabling families of different cultural and linguistic backgrounds to participate fully in their child's early intervention program.

- Learn about the culture, its beliefs and customs.
- Remember that each family within a culture is also unique.
- Send a written notice in the families' own language.
- Work with parents to establish a "doable" time and location.
- Encourage parents to bring along people important to them.
- Conduct meetings in quiet, private locations with seating arrangements that are not intimidating.
- Choose a trained interpreter who is culturally sensitive.
- Try not to overwhelm parents with the number of professionals present.
- Develop culturally sensitive listening skills.

Letter dated 10/10/97 from Secretary Richard Riley, Department of Education concerning electronic and information technology. Copies are available by contacting the Office of Special Education and Rehabilitative Services at the Department of Education, phone 202-205-5465 or at the Department's Web site: http://www.ed.gov/offices/OSERS/whatsnew/techpack.html

Use this space to add additional resources appropriate for your state and local district.

SECTION

5

Evaluation and Reevaluation

Section 614

Before the initial provision of special education and related services, a child must receive a "full and individual initial evaluation." There are two purposes: (a) to determine whether a child is a child with a disability; and (b) to determine the educational needs of the child. A reevaluation must be conducted for a child with a disability if conditions warrant a reevaluation, or if the child's parent or teacher requests a reevaluation, but at least once every 3 years. If the IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether a child continues to be a child with a disability, the LEA shall not be required to conduct such an assessment unless the child's parent requests it.

Q. What overall considerations must govern the evaluation process?

A. As part of any initial evaluation, if appropriate, qualified professionals shall:

- Review existing evaluation data on the child, including evaluation and information provided by the parents of the child, current classroom-based assessments and observations, and teacher and related services providers' observations; and
- On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine:
  - whether the child has a particular category of disability;
  - the present levels of performance and educational needs of the child; and
  - whether the child needs special education and related services.

Q. What are the requirements when conducting an evaluation or reevaluation?

A. The requirements include:

- A variety of assessment tools and strategies must be used to gather relevant functional and developmental information, including information provided by the parent.
- No single procedure can be used as the sole criterion in deciding whether or not a child has a disability.
- Technically sound instruments must be used to assess the relative contribution of cognitive, behavioral, physical, and developmental factors.
- Tests and other evaluation methods must be:
  - selected and administered so as not to be discriminatory on either a racial or a cultural basis; and
  - provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so.
- Any standardized tests that are given to the child:
  - have been validated for the specific purpose for which they are used;
  - are administered by trained and knowledgeable personnel; and
  - are administered in accordance with any instructions provided by the producer of such tests.
- The child must be assessed in all areas of suspected disability.
- Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child must be provided.

Q. How is eligibility determined?

A. Upon completion of administration of tests and other evaluation materials, the determination of whether the child is a child with a disability shall be made by a team of qualified professionals and the parent of the child. The first step of eligibility determination is to determine if the child is a child with a disability. The second piece of eligibility determination is that of adverse effect of the disability on educational performance to the extent that the child requires some special education in order to achieve a FAPE. A copy of the evaluation report and the documentation of determination of eligibility will be given to the parent.

Q. Is there a prioritized consideration in the determination of eligibility of special education services included in IDEA 1997?

A. Yes. In making a determination of eligibility, a child shall not be determined to be a child with a disability if the determinant factor is lack of instruction in reading, math, or limited English proficiency.

Q. Must the evaluation process be followed prior to determining that a child with a disability as defined in IDEA is no longer eligible for special education and related services?

A. Yes. Before it can be determined that a child is no longer eligible under IDEA, an evaluation must be conducted according to these requirements.

Q. What overall considerations must govern the reevaluation process?

A. As part of any reevaluation, the IEP team, and other qualified professionals, as appropriate, shall:

- Review existing evaluation data on the child, including evaluation and information provided by the parents of the child, current classroom-based assessments and observations, and teacher and related services providers' observation; and
- On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine:
  - whether the child continues to have a disability;
  - the present levels of performance and educational needs of the child;
  - whether the child continues to need special education and related services; and
  - whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general curriculum.

Q. What if additional data are not needed?

A. If the IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, the LEA shall:

- Notify the child's parents of:
  - that determination and the reasons for it; and
  - the parents' right to request an assessment to determine whether their child continues to be a child with a disability; and
- Not be required to conduct such an assessment unless the child' parents request it.

Q. Is parental consent required for evaluation and/or reevaluation of a child with a disability?

A. Parental consent is required for an initial evaluation; however, parental consent should be obtained, to the greatest extent possible, for reevaluation.

Comments from the Senate Committee

The law specifies that parents must provide informed consent before the initial evaluation of a child, but that such consent shall not be construed as consent for placement for the receipt of special education and related services. If a child's parents refuse consent for evaluation, an LEA may continue to pursue an evaluation by using the mediation and due process procedures under section 615, except to the extent inconsistent with state law relating to parental consent. *Senate Report,* p. 18

The committee intends that professionals, who are involved in the evaluation of a child, give serious consideration at the conclusion of the evaluation process to other factors that might be affecting a child's performance. There are substantial numbers of children who are likely to be identified as disabled because they have not previously received proper academic support. Such a child often is identified as learning disabled because the child has not been taught, in an appropriate or effective manner for the child, the core skill of reading. Other cases might include children who have limited English proficiency. Therefore, in making the determination of a child's eligibility, the bill states that a child shall not be determined to be a child with a disability if the determinant factor for such a determination is lack of instruction in reading or math or limited English proficiency. The committee believes this provision will lead to fewer children being improperly included in special education programs where their actual difficulties stem from another cause and that this will lead schools to focus greater attention on these subjects in the early grades. *Senate Report*, p. 19

In making the determination of a child's eligibility, the bill states that a child shall not be determined to be a child with a disability if the determinant factor for such a determination is lack of instruction in reading or math or limited English proficiency.

Reevaluations are to be conducted if conditions warrant a reevaluation or if the child's parents or teacher requests a reevaluation, but at least once every 3 years. Informed parental consent also must be obtained for reevaluations, except that such informed consent need not be obtained if the LEA can demonstrate that it has taken reasonable steps to obtain consent and the child's parents have failed to respond.

One of the most significant changes in the bill relates to how the evaluation process should be viewed. For example, over the years, the required 3-year reevaluation has become a highly paperwork-intensive process, driven as much by concern for compliance with the letter of the law, as by the need for additional evaluation information about a child. The committee believes that a child should not be subjected to unnecessary tests and assessments if the child's disability has not changed over the 3-year time period, and the LEA should not be saddled with associated expenses unnecessarily. If there is no need to collect additional information about a child's continuing eligibility for special education, any necessary evaluation activities should focus on collecting information about how to teach and assist the child in the way he or she is most capable of learning.

Thus, provisions in the bill require that existing evaluation data on a child be reviewed to determine if any other data are needed to make decisions about a child's eligibility and services. If it is determined by the IEP team and other qualified professionals that additional data are not needed, the parents must be so notified of the determination that no additional data are needed, the reasons for it, and of the parents' right to still request an evaluation. Unlike current law, however, no further evaluations will be required at that time unless requested by the parents. *Senate Report*, pp. 18-19

Resources on Evaluation

Algozzine, B., Ruhl, K., & Ramsey, R. (1991). *Behaviorally disordered? Assessment for identification and instruction.* 37pp. #P339. Reston, VA: The Council for Exceptional Children.

Artiles, A., & Zamora-Duran, G., (1997). *Reducing disproportionate representation of culturally diverse students in special and gifted education.* #P5129. Reston, VA: The Council for Exceptional Children.

Gain insight on testing diverse students with disabilities.

Choate, J. S., Emright, B. E., Miller, L. J., Poteet, J. A., & Rakes, T. A. (1995). Curriculum-based assessment and programming (3rd ed.). Boston: Allyn & Bacon.

Help in choosing the best approach to assessment for students who have behavioral disorders.

Eaves, R. C. (1984-85). Educational assessment in the United States [Monograph]. *Diagnostique, 10*(1-4), 5-39.

Eaves, R. (Ed.). (1998-1990). *Monograph: Assessment for the 1990s—Critical reviews of recent instruments,* 15, (No. 1-4).

Fueyo, V. (1997). Below the tip of the iceberg: Teaching language-minority students. *TEACHING Exceptional Children, 30*(1), 61-65.

Tips on discovering whether students have a language disability or are limited in their mastery of English.

Joint Committee on the Standards for Educational and Psychological Testing, (Draft, March, 1997) AERA, APA, NCME.

Leung, B. (1996). Quality assessment practices in a diverse society. *TEACHING Exceptional Children, 28*(3), 42-45.

Neisworth, J. T., & Bagnato, S. J. (1996). Assessment for early intervention: Emerging themes. In S. L. Odom & M. E. McLean (Eds.), *Early intervention/early childhood special education: Recommended practices* (pp. 23-57). Austin, TX: Pro-Ed.

This article elaborates on specific educational practices in early intervention and early childhood special education recommended by a task force of The Council for Exceptional Children's Division for Early Childhood.

Pike, K., & Salend, S. (1995). Authentic assessment strategies, alternatives to norm-referenced testing. *TEACHING Exceptional Children, 28*(1), 15-20.

Use classroom-based assessment strategies:

- Observation—structured, informal, checklists
- Anecdotal Records
- Error Analysis
- Miscue Analysis
- Think-Alouds
- Self-Evaluation Questionnaires and Interviews
- Journals and Learning Logs
- Portfolio Assessment

Taylor, T. L. (1997). *Assessment of exceptional students* (4th ed.). Boston: Allyn & Bacon.

This book examines the educational and psychological assessment of exceptional students. Some general topics covered include issues and concerns of assessment, informal procedures, basic tools for teachers, assessment of abilities, assessment of achievement, special assessment considerations, and assessment procedures.

Use this space to add additional resources appropriate for your state and local district.

SECTION

6

Individualized Education Program (IEP)

Section 614

The IEP is a written statement for each child with a disability that must be in effect at the beginning of each school year and must be developed by an individualized education program team (IEP team).

Q. Who must guarantee that the IEP must be in effect?

A. The LEA, SEA, or other state agency is responsible for ensuring that an IEP is in effect for each child with a disability in its jurisdiction.

Q. Is there an alternative for preschoolers with disabilities?

A. Yes. At state and local discretion, if the parent agrees, a preschool child with a disability may have an individualized family service plan.

Content of the IEP

Q. What must be included in an IEP?

A. The following must be included:

- A statement of the child's present levels of educational performance, including:
  - how the child's disability affects the child's involvement and progress in the general curriculum; or
  - for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities.
- A statement of measurable annual goals, including benchmarks or short-term objectives, related to:
  - meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum; and
  - meeting each of the child's other educational needs that result from the child's disability.
- A statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child:
  - to advance appropriately toward attaining the annual goals;
  - to be involved and progress in the general curriculum and to participate in extracurricular and other nonacademic activities; and
  - to be educated and participate with other children with disabilities and nondisabled children in the activities described in this paragraph.
- An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular education class and in extracurricular and other nonacademic activities.
- A statement of any individual modifications in the administration of state- or district-wide assessments of student achievement that are needed in order for the child to participate in these assessments; and
- If the IEP team determines that the child will not participate in a particular state- or district-wide assessment of student achievement (or part of such an assessment), the IEP must include a statement of:
  - why that assessment is not appropriate for the child; and
  - how the child will be assessed.
- The projected date for the beginning of the services and modifications and their anticipated frequency, location, and duration.

Q. What transition services are required and when must they begin?

A. Beginning at age 14, and updated annually, a statement is included of the transition service needs of the child under the applicable components of the child's IEP that focuses on the child's courses of study (such as participation in advanced-placement courses or a vocational education program).

Beginning at age 16 (or younger, if determined appropriate by the IEP team), a statement is included of needed transition services for the child, including, when appropriate, a statement of the interagency responsibilities or any needed linkages.

Beginning at least 1 year before the child reaches the age of majority under state law, a statement that the child has been informed of his or her rights under the title, if any, is included that will transfer to the child on reaching the age of majority.

Q. How is progress determined and reported?

A.

- The child's progress toward the annual goals will be measured.
- The child's parents will be regularly informed (by such means as periodic report cards), at least as often as parents are informed of their nondisabled children's progress, of:
  - their child's progress toward the annual goals; and
  - the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.

Q. Is there a protection against unnecessary paperwork?

A. The IEP team is not required to include information under one component of a child's IEP that is already contained under another component of the IEP.

The IEP Team

Q. Who are the participants on the IEP team?

A. The participants include:

- The parents of a child with a disability;
- At least one general education teacher of the child (if the child is, or may be, participating in the general education environment);
- At least one special education teacher, or where appropriate, at least one special education provider of the child;
- A representative of the LEA who:
  - is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
  - is knowledgeable about the general education curriculum; and
  - is knowledgeable about the availability of resources of the LEA.
- An individual who can interpret the instructional implications of evaluation results, who may be another already required member of the team;
- At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
- Whenever appropriate, the child with the disability.

Q. What is the role of the general educator at the IEP meeting?

A. The general education teacher of the child, as a member of the IEP team, shall, to the extent appropriate, participate in the development of the IEP of the child, including the determination of appropriate positive behavioral interventions and strategies and the determination of supplementary aids and services, program modifications, and support for school personnel.

Development of the IEP

Q. What central factors must be considered in developing the IEP?

A. Central factors to be considered include:

- The strengths of the child and the concerns of the parents for enhancing the education of their child; and
- The results of the initial evaluation or most recent evaluation of the child.

Q. What special factors must be considered in developing the IEP?

A. In the case of a child whose behavior impedes his or her learning or that of others, consider, when appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior.

In the case of a child with limited English proficiency, consider the language needs of the child as such needs relate to the child's IEP.

In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child.

Consider the communication needs of the child, in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode. Finally, consider whether the child requires assistive technology devices and services.

Q. What is the role of the parent in making placement decisions?

A. Each LEA or SEA shall ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

Review and Revision of the IEP

Q. How often must IEPs be reviewed?

A. IEPs must be reviewed periodically, but no less than annually, to determine whether the annual goals are being achieved.

Q. What is included in the IEP review and revision?

A. The IEP is reviewed and revised to report to the parent on progress towards meeting IEP goals as well as to address any lack of expected progress toward the annual goals and in the general curriculum, where appropriate. In addition, the following should be included: the results of any reevaluation; information about the child provided to, or by, the parents, as required in the evaluation process; the child's anticipated needs; or other pertinent matters.

Q. What is the role of the general educator in the review and revision of the IEP?

A. The general education teacher of the child, as a member of the IEP team, shall, to the extent appropriate, participate in the review and revision of the IEP of the child.

Q. What should occur if an agency, other than the LEA, doesn't provide the transition services in the IEP?

A. If a participating agency, other than the LEA, fails to provide the transition services described in the IEP, the LEA shall reconvene the IEP team to identify alternative strategies to meet the transition objectives for the child set out in that program.

SOURCE: *IDEA 1997: LET'S MAKE IT WORK*, 1998, RESTON, VA: THE COUNCIL FOR EXCEPTIONAL CHILDREN • 21

Once a child has been identified as being eligible for special education, the connection between special education and related services and the child's opportunity to experience and benefit from the regular education curriculum should be strengthened. The majority of children identified as eligible for special education and related services are capable of participating in the regular education curriculum to varying degrees with some adaptations and modifications. This provision is intended to ensure that children's special education and related services are in addition to and are affected by the regular education curriculum, not separate from it.

Specific day-to-day adjustments in instructional methods and approaches that are made by either a regular or special education teacher to assist a child with a disability to achieve his or her annual goals would not normally require action by the child's IEP team. However, if changes are contemplated in the child's measurable annual goals, benchmarks, or short term objectives, or in any of the services or program modifications, or other components described in the child's IEP, the LEA must ensure that the child's IEP team is reconvened in a timely manner to address those changes.

The law provides that regular education teachers participate on the IEP team, but this provision is to be construed in light of the law's proviso that the regular education teacher, to the extent appropriate, participate in the devleopment of the IEP of the child.

The new emphasis on participation in the regular education curriculum is not intended to result in major expansions in the size of the IEP of dozens of pages of detailed goals and benchmarks or objectives in every curricular content standard or skill. The new focus is intended to produce attention to the accommodations and adjustments necessary for children with disabilities to access the regular education curriculum and the special services which may be necessary for appropriate participation in particular areas of the curriculum due to the nature of the disability.

The law requires that a child's IEP include a statement of measurable annual goals, including benchmarks or short-term objectives. The committee views this requirement as crucial. It will help parents and educators determine if the goals can reasonably be met during the year, and as important, allow parents to be able to monitor their child's progress. The bill requires that annual goals included in a child's IEP relate to "meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the regular education curriculum." This language should not be construed to be a basis for excluding a child with a disability who is unable to learn at the same level or rate as children without disabilities in an inclusive classroom or program. It is intended to require that the IEP's annual goals focus on how the child's needs resulting from his or her disability can be addressed so that the child can participate, at the individually appropriate level, in the regular education curriculum offered to all students.

Prior to the enactment of P.L. 94-142 in 1975, the opportunity and inclination to educate children with disabilities was often in separate programs and schools away from children without disabilities. IDEA 1997 contains a presumption that children with disabilities are to be educated in regular education classes.

The Committee knows that excluding children with disabilities from these assessments severely limits and in some cases prevents children with disabilities, through no fault of their own, from continuing on to post-secondary education. The committee reaffirms the existing Federal law requirement that children with disabilities participate in state- and district-wide assessments. This will assist parents in judging if their child is improving with regard to his or her academic achievement, just as the parents of nondisabled children do.

The location where special education and related services will be provided to a child influences decisions about the nature and amount of these services and when they should be provided to a child. For example, the appropriate place for the related service may be the regular education classroom, so that the child does not have to choose between a needed service and the regular educational program.

The purpose of this requirement is to focus attention on how the child's educational program can be planned to help the child make a successful transition to his or her goals for life after secondary school. This provision is designed to augment, and not replace, the separate transition services requirement,

under which children with disabilities beginning no later than age 16 receive transition services including instruction, community experiences, the development of employment and other postschool objectives and, when appropriate, independent living skills and functional vocational evaluation. For example, for a child whose transition goal is a job, a transition service could be teaching the child how to get to the job site on public transportation.

The law clarifies that when a child is considered incapable of making educational decisions, the state will develop procedures for appointing the parent or another individual to represent the interests of the child. This transfer of rights is also addressed under Section 615(m) in the law.

The Committee believes that informing parents of children with disabilities as often as other parents will, in fact, reduce the cost of informing parents of children with disabilities and facilitate more useful feedback on their child's performance. One method recommended by the committee would be providing an IEP report card with the regular education report card, if the latter is appropriate and provided for the child.

An IEP report card could also be made more useful by including check boxes or equivalent options that enable the parents and the special educator to review and judge the performance of the child.

An example would be to state a goal or benchmark on the IEP report card and rank it on a multipoint continuum. The goal might be, "Ted will demonstrate effective literal comprehension." The ranking system would then state the following, as indicated by a check box: No progress; some progress; good progress; almost complete; completed. Of course, these concepts would be used by the school and the IEP team when appropriate. This example is not intended to indicate the committee's preference for a single means of compliance with this requirement. Very often, regular education teachers play a central role in the education of children with disabilities. In that regard the law provides that regular education teachers participate on the IEP team, but this provision is to be construed in light of the law's proviso that the regular education teacher, to the extent appropriate, participate in the development of the IEP of the child. The Committee recognizes the reasonable concern that the provision including the regular education teacher might create an obligation that the teacher participate in all aspects of the IEP team's work. The Committee does not intend that to be the case and only intends it to be the extent appropriate. The Committee wishes to emphasize that the "support" for school personnel, which is stated in the child's IEP, is that support that will assist them to help a particular child progress in the regular education curriculum.

Related services personnel should be included on the team when a particular related service will be discussed at the request of a child's parents or the school. Such personnel can include personnel knowledgeable about services that are not strictly special education services, such as specialists in curriculum content areas such as reading. Furthermore, the Committee recognizes that there are situations that merit the presence of a licensed registered school nurse on the IEP team. The Committee also recognizes that schools sometimes are assumed to be responsible for all health-care costs connected to a child's participation in school. The Committee wishes to encourage, to the greatest extent practicable and when appropriate, the participation of a licensed registered school nurse on the IEP team to help define and make decisions about how to safely address a child's educationally related health needs.

The Committee believes that a number of considerations are essential to the process of creating a child's IEP. The purpose of the IEP is to tailor the education to the child; not tailor the child to the education. If the child could fit into the school's regular education program without assistance, special education would not be necessary.

SOURCE: *IDEA 1997: LET'S MAKE IT WORK*, 1998, RESTON, VA: THE COUNCIL FOR EXCEPTIONAL CHILDREN · 23

Resources on the IEP

Furney, K. S., Hasazi, S. B., & Destafano, L. (1997). Transition policies, practices, and promises: Lessons from three states. *Exceptional Children, 63,* 343-355.

Promising policies and practices for successful transition are listed in this article.

- Establish shared values and beliefs.
- Use direct policy approaches.
- Unite leadership and advocacy.
- Build collaborative structures.
- Use results of research and evaluation.
- Build the capacity for long-lasting change.
- Link transition to other restructuring efforts. (p. 348)

Johnson, L. J., & LaMontagne, M. J. (1994). *Meeting early intervention challenges, second edition.* 307pp. #S5074. Available from The Council for Exceptional Children.

The development of an IFSP is an ongoing decision-making process. Pertinent considerations are presented in this article.

Polsgrove, L. (Ed.). (1991). *Reducing undesirable behavior.* 33pp. #P342. Reston, VA: The Council for Exceptional Children.

Find ways to use a continuum of strategies to reduce undesirable behavior.

Simpson, R. L. , Miles, B. S., Walker, B. L., Ormsbee, C. K., & Downing, J. A. (1991). *Programming for aggressive and violent students.* 42pp. #P350. Reston, VA: The Council for Exceptional Children.

Consider transdisciplinary teams and other collaborative arrangements in designing an IEP for students who are aggressive or violent.

Thompson, L. (1997). Pathways to family empowerment: Effects of family-centered delivery of early intervention services. *Exceptional Children, 64,* 99-113.

Factors that positively impact parental empowerment are provided in this article.

- Hold timely IEP/IFSP meetings with all relevant service providers at the table.
- Help families identify and engage latent supports in their social networks.
- Be a model and a mentor to parents.

Turbiville, V. P., Turnbull, A. P., Garland, C. W., & Lee, I. M. (1996). Development and implementation of IFSPs and IEPs: Opportunities for empowerment. In S. L. Odom & M. E. McLean (Eds.), *Early intervention/early childhood special education: Recommended practices* (pp. 77-100). Austin, TX: Pro-Ed.

This article elaborates on specific educational practices in early intervention and early childhood special education recommended by a task force of The Council for Exceptional Children's Division for Early Childhood.

Use this space to add additional resources appropriate for your state and local district.

SECTION

7

Related Services and Technology

Section 687

The potential of technology to improve and enhance the lives of individuals with disabilities is virtually unlimited. Progress in recent years has demonstrated the need for intensified support to facilitate technological development and innovation into the 21st century. IDEA, in particular Part D, emphasizes the importance of technology and the need to share cutting-edge information about advances in the field.

Q. How has the definition of related services changed under the new law?

A. The new legislation would add "orientation and mobility services" to the definition of related services.

> This change is not intended to reduce or alter the scope of related services or special education services that are available to children with disabilities, but merely to emphasize the importance of orientation and mobility services. Orientation and mobility services are generally recognized to be services provided to children who are blind or have visual impairments. However, it is important to keep in mind that children with other disabilities may also need instruction in traveling around their school, or to and from school. A high-school aged child with a mental disability, for example, might need to be taught how to get from class to class so that he can participate in his inclusive program. The addition of orientation and mobility services to the list of identified related services is not intended to result in the denial of appropriate services for children with disabilities who do not have visual impairments or blindness. *Senate Report*, p. 6

Q. What are supplementary aids and services?

A. The definition, which is new under the law, means aids, services, and other supports that are provided in general education classes or other education-related settings to enable children with disabilities to be educated with children who are nondisabled to the maximum extent appropriate.

Q. Are SEAs and LEAs required to pay for all services related to providing special education to students with disabilities?

A. No. The new law strengthens language for requiring interagency coordination. The governor or designee is required to ensure that an interagency agreement is in effect between the state education department and public agencies that are assigned responsibility to provide or pay for any services that are also considered special education or related services, including assistive technology devices, supplementary aids and services, and transition services. The agreement must identify the financial responsibility of each agency, including the state Medicaid agency and other public insurers of children with disabilities whose financial responsibility will precede the financial responsibility of the LEA.

> The bill strengthens the requirements on ensuring provision of services by noneducational agencies while retaining a single line of responsibility. The chief executive officer of a state must develop and implement interagency agreements and reimbursement mechanisms to ensure that educational agencies have access to funding from noneducational public agencies that are responsible for services that are also necessary for ensuring a FAPE to children with disabilities.
>
> A provision is added to the Act to strengthen the obligation to ensure that all services necessary to ensure a FAPE are provided through the coordination of public educational and noneducational programs. This subsection is meant to reinforce two important principles: (a) that

the SEA or LEA responsible for developing a child's IEP can look to noneducational agencies, such as Medicaid, to pay for or provide those services they (the noneducational agencies) are otherwise responsible for; and (b) that the SEA or LEA remains responsible for ensuring that children receive all the services described in their IEPs in a timely fashion, regardless of whether another agency will ultimately pay for the services.

> The committee places particular emphasis in the bill on the relationship between schools and the state Medicaid Agency in order to clarify that health services provided to children with disabilities who are Medicaid-eligible and meet the standards applicable to Medicaid are not disqualified for reimbursement by Medicaid agencies because they are provided services in a school context in accordance with the child's IEP. *Senate Report*, p. 12

Q. Why does a student's IEP have to include a listing of the related services and supplementary aids and services that are expected to be provided to the student?

A. The IEP must contain this information, as well as any program modifications or support for school personnel necessary, so that the child may advance toward attaining the annual goals, to be involved and progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities, and to be educated and participate with other children with and without disabilities in activities. In addition, during the development of the child's IEP, the IEP team must also consider whether the child requires assistive technology devices and services in order to progress in the general education curriculum.

> The IEP should also address the unique needs of the child that arise out of his or her disability that must be addressed in order for the child to progress in the general education curriculum, such as the need of a child who is blind to read Braille, or of a child who is cognitively disabled to receive transportation training (i.e., how to use public transportation). *Senate Report*, p. 20

Q. In order to improve early intervention, educational, and transitional services and results for children with disabilities through coordinated research and personnel preparation, is technology a component of the competitive grants that must be made available through the U.S. Department of Education?

A. Yes. The Secretary is required to support activities that lead to the production of new knowledge through activities that advance the design, development, and integration of technology, assistive technology devices, media, and materials.

Q. Does the new law include funds for the development of new technology to assist students with disabilities?

A. Yes. The legislation retains grant authority for technology development and educational media activities. There is no specific level of funds authorized but such sums as necessary are authorized for each of the fiscal years 1998 through 2002.

In addition, the U.S. Department of Education is required to make competitive grants to support activities to promote the development, demonstration, and utilization of technology, including activities such as:

- Conducting research and development activities on the use of innovative and emerging technologies;
- Promoting the demonstration and use of innovative and emerging technologies by improving and expanding the transfer of technology from research and development to practice;
- Providing technical assistance to recipients of other assistance, concerning the development of accessible, effective, and usable products;
- Communicating information on available technology and uses of technology to assist children with disabilities;
- Supporting the implementation of research programs on captioning or video description;
- Supporting research, development, and dissemination to technology with universal-design features; and
- Demonstrating the use of publicly-funded telecommunication systems to provide parents and teachers with information and training concerning early diagnosis of, intervention for, and effective teaching strategies for young children with reading disabilities.

Resources on Technology

Chambers, A. C. (1997). *Has technology been considered? A guide for IEP teams.* 50pp. #D5234. Council of Administrators of Special Education, Inc. (CASE) and Technology and Media (TAM) Divisions of The Council for Exceptional Children. Available from The Council for Exceptional Children.
For advice on writing assistive technology into the IEP.

Hourcade, J. J., Parette, H. P., Jr., & Huer, M. B. (1997). Family and cultural alert! Considerations in assistive technology assessment. *TEACHING Exceptional Children, 30*(1) 40-43.
Do families want to use assistive technology? Authors ask some very penetrating questions in their article about this topic.

Menlove, M. (1996). A checklist for identifying funding sources for assistive technology. *TEACHING Exceptional Children, 28*(3), 20-24.

Although the LEAs or SEAs are required to provide devices or services written into a child's IEP or IFSP, funding may come from other sources.

- If medically necessary: Medicaid, Supplemental Social Security Income, Social Security Disability, Private Insurance, Early Periodic Screening, Diagnosis and Treatment Programs, Intermediate Care Facilities for the Mentally Retarded.
- If transition related: Vocation Rehabilitation Supported Employment Projects with Industry Program for Achieving Self-Sufficiency (PASS), Impairment Related Work Expenses.
- If independence oriented: Independent Living Programs.
- If dealing with specific disabilities: Division of Services to the Deaf, Division of Services to the Blind. State Tech-Act Programs.
- If dealing with special purchases: service organizations such as Elks, Lions, Easter Seal Society, United Cerebral Palsy Association.

Use this space to add additional resources appropriate for your state and local district.

SECTION

8

Early Childhood

Section 619 and Part C

Section 619 of Part B—The Preschool Grants Program

The Secretary provides grants to assist states to provide special education and related services to children with disabilities ages 3 through 5, inclusive; and at the state's discretion, to 2-year-old children with disabilities who will turn 3 during the school year. A state is eligible for a grant if the state has a Part B grant and makes a FAPE available to all children with disabilities, ages 3 through 5, residing in the state.

Part C—Infants and Toddlers with Disabilities

The Secretary shall make grants to states to assist each state to maintain and implement a state-wide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families. A state is eligible for a grant if the state has adopted a policy that appropriate early intervention services are available to all infants and toddlers with disabilities in the state and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the state; and has in effect a state-wide system that meets the requirements of Part C.

Q. What requirements are followed when providing special education and related services to preschool children with disabilities under Section 619?

A. The Part B requirements must be followed. All the rights and protections available under Part B are available to eligible preschool children and their parents.

Q. What must local school districts do regarding the transition of children leaving the Part C program who are eligible for preschool special education?

A. Local school districts must ensure that children participating in early intervention programs assisted under Part C, experience a smooth and effective transition to those preschool programs in accordance with Part C requirements. By the third birthday of an eligible child, an IEP or, if allowed by SEA and agreed to by the LEA and the parent, an IFSP, has been developed and is being implemented for the child. In addition, the LEA must participate in transition planning conferences arranged by the lead agency under Part C.

Q. What is the eligibility criteria for children under the Part C program?

A. The term "infant or toddler with a disability" means a child under 3 years of age who needs early intervention services because the child:

- Is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or
- Has a diagnosed physical or mental condition which has a high probability of resulting in developmental delay; and this may also include, at a state's discretion, at-risk infants and toddlers.

Q. What does a child eligible under Part C receive?

A. Each infant or toddler with a disability, and the infant's or toddler's family must have available:

- A multidisciplinary assessment of the unique strengths and needs of the infant or toddler and the identification of services appropriate to meet such needs;
- A family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the infant or toddler; and
- A written IFSP developed by a multidisciplinary team, including the parents.

SOURCE: *IDEA 1997: LET'S MAKE IT WORK*, 1998, RESTON, VA: THE COUNCIL FOR EXCEPTIONAL CHILDREN · 29

The IFSP shall be evaluated once a year and the family must be provided a review of the plan at 6-month intervals (or more often where appropriate based on infant or toddler and family needs). The IFSP must be developed within a reasonable time after the assessment is completed. With the parents' consent, early intervention services may commence prior to the completion of the assessment.

Q. What must be included in an IFSP?

A. The IFSP must be in writing and contain:

- A statement of the infant's or toddler's present levels of physical development, cognitive development, communication development, social or emotional development, and adaptive development, based on objective criteria;
- A statement of the family's resources, priorities, and concerns relating to enhancing the development of the family's infant or toddler with a disability;
- A statement of the major outcomes expected to be achieved for the infant or toddler and the family, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the outcomes is being made and whether modifications or revisions of the outcomes or services are necessary;
- A statement of specific early intervention services necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and method of delivering services;
- A statement of the natural environments in which early intervention services shall appropriately be provided, including a justification of the extent, if any, to which the services will not be provided in a natural environment;
- The projected dates for initiation of services and the anticipated duration of the services;
- The identification of the service coordinator from the profession most immediately relevant to the infant's or toddler's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities under Part C) who will be responsible for the implementation of the plan and coordination with other agencies and persons; and
- The steps to be taken to support the transition of the toddler with a disability to preschool or other appropriate services.

Q. Is parental consent required before early intervention can be provided?

A. Yes. The contents of the IFSP must be fully explained to the parents and informed written consent from the parents must be obtained before early intervention services as described in the plan can be provided. If the parents do not provide consent with respect to a particular early intervention service, then the early intervention services to which consent is obtained shall be provided.

Q. What are the transition requirements for early intervention?

A. Each state must ensure a smooth transition for toddlers receiving early intervention services to preschool or other appropriate services, including a description of how:

- The families of such toddlers will be included in the transition plans required; and
- The lead agency will notify the LEA for the area in which such a child resides that the child will shortly reach the age of eligibility for preschool services under part B, as determined in accordance with state law;
- In the case of a child who may be eligible for such preschool services, with the approval of the family of the child, a conference will be convened among the lead agency, the family, and the LEA at least 90 days (and at the discretion of all such parties, up to 6 months) before the child is eligible for the preschool services, to discuss any such services that the child may receive; and
- In the case of a child who may not be eligible for such preschool services, with the approval of the family, reasonable efforts will be made to convene a conference among the lead agency, the family, and providers of other appropriate services for children who are not eligible for preschool services under Part B, to discuss the appropriate services that the child may receive;
- Procedures must occur to review the child's program options for the period from the child's third birthday through the remainder of the school year; and
- A transition plan must be established.

Q. Must a state submit a plan for approval under Part C? How often does it have to be submitted?

A. A state must submit an application to the Secretary designating a number of things including:

- A designation of the lead agency in the state that will be responsible for the administration of Part C funds;
- A designation of an individual or entity responsible for assigning financial responsibility among appropriate agencies;
- Information demonstrating to the Secretary's satisfaction that the state has in effect the state-wide system;
- A description of services to be provided to infants and toddlers with disabilities and their families through the system;

- A description of such services, if the state provides services to at-risk infants and toddlers through the system;
- A description of the uses for which funds will be expended in accordance with this part;
- A description of the procedure used to ensure that resources are made available under this part for all geographic areas within the state; and
- A description of state policies and procedures that ensure that, prior to the adoption by the state of any other policy or procedure, there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of infants and toddlers with disabilities.

The Secretary may not disapprove an application unless the Secretary determines, after notice and opportunity for a hearing, that the application fails to comply with the requirements of Part C.

If a state has on file with the Secretary a policy, procedure, or assurance that demonstrates that the state meets a requirement of Part C including any policy or procedure filed under part H (as in effect before July 1, 1998), the Secretary shall consider the state to have met the requirement for purposes of receiving a grant.

An application submitted by a state shall remain in effect until the state submits to the Secretary such modifications as the state determines necessary. This shall apply to a modification of an application to the same extent and in the same manner as it applies to the original application.

The Secretary may require a state to modify its application, but only to the extent necessary to ensure the state's compliance with Part C if:

- An amendment is made to IDEA or a Federal regulation issued under IDEA;
- A new interpretation of IDEA is made by a Federal court or the state's highest court; or
- An official finding of noncompliance with Federal law or regulations is made with respect to the state.

Q. What is included in the state-wide system under Part C?

(See sections of the document for parallel requirements.)

A. Each state-wide system must include the following 16 components:

- A definition of developmental delay;
- A state policy that is in effect which ensures that appropriate early intervention services are available to *all* infants and toddlers with disabilities and their families;
- Provision of multidisciplinary evaluation and family-directed identification of the needs of the family;
- Provision of an IFSP including service coordinator;
- A child find system;
- A public awareness program;
- A central directory;
- A comprehensive system of personnel development;
- Establishment and maintenance of personnel standards;
- A single line of responsibility (lead agency) determined by the Governor;
- A contracting policy;
- A procedure for reimbursement of Part C funds;
- Procedural safeguards;
- A data system;
- A state interagency coordinating system; and
- Policies and procedures ensuring the provision of services in the natural environment to the maximum extent appropriate.

Q. What procedural safeguards are required under Part C?

A. The following procedural safeguards are required under Part C:

- The timely administrative resolution of complaints by parent. Any party aggrieved by the findings and decision regarding an administrative complaint shall have the right to bring a civil action in any state or district court of the United States without regard to the amount in controversy. In any action brought under this paragraph, the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and base its decision on the preponderance of the evidence;
- The right to confidentiality of personally identifiable information, including the right of parents to written notice of and written consent to the exchange of such information among agencies consistent with Federal and state law;
- The right of the parents to determine whether they, their infant or toddler, or other family members will accept or decline any early intervention service under this part in accordance with state law without jeopardizing other early intervention services under this part;
- The opportunity for parents to examine records relating to assessment, screening, eligibility determinations, and the development and implementation of the IFSP;

- Procedures to protect the rights of the infant or toddler whenever the parents of the infant or toddler are not known or cannot by found or the infant or toddler is a ward of the state, including the assignment of an individual (who shall not be an employee of the state lead agency, or other state agency, and who shall not be any person, or any employee of a person, providing early intervention services to the infant or toddler or any family member of the infant or toddler) to act as a surrogate for the parents;
- Written prior notice to the parents of the infant or toddler with a disability whenever the state agency or service provider proposes to initiate or change or refuses to initiate or change the identification, evaluation, or placement of the infant or toddler, or the provision of appropriate early intervention services to the infant or toddler;
- Procedures designed to ensure that the notice required fully informs the parents, in the parents' native language, unless it clearly is not feasible to do so, of all procedures available;
- The right of parents to use mediation in accordance with section 615(e) of P.L. 105-17 except that:
  - any reference in the section to an SEA agency shall be considered to be a reference to a state's lead agency established or designated under section 635(a)(10);
  - any reference in the section to an LEA shall be considered to be a reference to a local service provider or the state's lead agency; and
  - any reference in the section to the provision of FAPE to children with disabilities shall be considered to be a reference to the provision of appropriate early intervention services to infants and toddlers with disabilities.

Q. What happens during the time a dispute is being resolved?

A. During the pendency of any proceeding or action involving a complaint by the parents, unless the state agency and the parents otherwise agree, the infant or toddler shall continue to receive the appropriate early intervention services currently being provided or, if applying for initial services, shall receive the services not in dispute.

Q. How can Part C funds be used?

A. In addition to using funds to maintain and implement the state-wide system, a state may use such funds:

- for direct early intervention services for infants and toddlers and their families that are not otherwise funded through other public or private sources;
- to expand and improve on services for infants and toddlers and their families that are otherwise available;
- to provide a FAPE, in accordance with Part B, to children with disabilities from their third birthday to the beginning of the following school year; and
- in any state that does not provide services for at-risk infants and toddlers to strengthen the state-wide system by initiating, expanding, or improving collaborative efforts related to at-risk infants and toddlers, including establishing linkages with appropriate public or private community-based organizations, services, and personnel for the purposes of:
  - identifying and evaluating at-risk infants and toddlers;
  - making referrals of the infants and toddlers identified and evaluated; and
  - conducting periodic follow-up on each referral to determine if the status of the infant or toddler involved has changed with respect to the eligibility of the infant or toddler for services under Part C.

Part C funds cannot be commingled with state funds; and can be used so as to supplement the level of state and local funds expended for infants and toddlers and their families and in no case to supplant those state and local funds.

Q. What does payor of last resort mean as it relates to Part C funds?

A. Funds provided under Part C may not be used to satisfy a financial commitment for services that would have been paid for from another public or private source, including any medical program administered by the Secretary of Defense, but for the enactment of Part C, except that whenever considered necessary to prevent a delay in the receipt of appropriate early intervention services by an infant, toddler, or family in a timely fashion. Funds provided under Part C may be used to pay the provider of services pending reimbursement from the agency that has ultimate responsibility for the payment.

Further, nothing in Part C can be construed to permit the state to reduce medical or other assistance available or to alter eligibility under Title V of the Social Security Act (relating to maternal and child health) or Title XIX of the Social Security Act (relating to Medicaid for infants or toddlers with disabilities) within the state.

Q. Do these payor of last resort requirements apply to CHAMPUS?

A. Yes, as noted above they apply to any medical program administered by the Secretary of Defense.

Q. What is the role of the State Interagency Coordinating Council (ICC)?

A. The ICC, appointed by the Governor, must include members as designated in the federal statute. Overall, 20% of the members must be service providers and 20% must be parents of children with disabilities, ages

12 or younger, including one who must have a child with a disability age 6 or younger.

The ICC advises and assists the lead agency in the performance of their responsibilities under Part C, particularly the identification of the sources of fiscal and other support for services for early intervention programs, assignment of financial responsibility to the appropriate agency, and the promotion of the interagency agreements. The Council also;

- Advises and assists the lead agency in the preparation of applications and amendments;
- Advises and assists the SEA regarding the transition of toddlers with disabilities to preschool and other appropriate services; and
- Prepares and submits an annual report to the Governor and to the Secretary on the status of early intervention programs for infants and toddlers with disabilities and their families operated within the state.

In addition, the council may advise and assist the lead agency and the SEA regarding the provision of appropriate services for children from birth through age 5. The council may advise appropriate agencies in the state with respect to the integration of services for infants and toddlers and at-risk infants and toddlers and their families, regardless of whether at-risk infants and toddlers are eligible for early intervention services in the state.

Q. What is the role of the Federal Interagency Coordinator Council (FICC)?

A. The FICC is established to:

- Minimize duplication of programs and activities across Federal, state, and local agencies, relating to:
  - early intervention services for infants and toddlers (including at-risk infants and toddlers) and their families; and
  - preschool or other appropriate services.
- Ensure the effective coordination of Federal early intervention and preschool programs and policies across Federal agencies;
- Coordinate the provision of Federal technical assistance and support activities to states;
- Identify gaps in Federal agency programs and services; and
- Identify barriers to Federal interagency cooperation.

The Council's membership is designated in the statute, and 20% of the members must be parents of children with disabilities age 12 or under, including at least one whose child is under the age of 6 years.

Q. What are the functions of the Council?

A. The Council's functions are to:

- Advise and assist the Secretary of Education, the Secretary of Health and Human Services, the Secretary of Defense, the Secretary of the Interior, the Secretary of Agriculture, and the Commissioner of Social Security in the performance of their responsibilities related to serving children from birth through age 5 who are eligible for services under Part C or under Part B;
- Conduct policy analyses of Federal programs related to the provision of early intervention services and special educational and related services to infants and toddlers and their families, and preschool children, in order to determine areas of conflict, overlap, duplication, or inappropriate omission;
- Identify strategies to address issues described above;
- Develop and recommend joint policy memoranda concerning effective interagency collaboration, including modifications to regulations, and the elimination of barriers to interagency programs and activities;
- Coordinate technical assistance and disseminate information on best practices, effective program coordination strategies, and recommendations for improved early intervention programming for infants and toddlers and their families and preschool children; and
- Facilitate activities in support of states' interagency coordination efforts.

Early Childhood Resources

Udell, T., Peters, J., & Templeman, T. P. (1997). From philosophy to practice in inclusive early childhood programs. *TEACHING Exceptional Children, 30*(3), 44-49.

Developmentally Appropriate Practices (DAP) are widely disseminated guidelines for serving young children ages birth to 8 developed by the National Association for the Education of Young Children (NAEYC). DAP emphasizes child-initiated, child-directed play activities and are based on the assumption that young children are intrinsically motivated to learn by their desire to understand their environment. Teaching strategies include hands-on exploratory activities with emphases on the use of concrete, real, and relevant activities.

Placement in natural DAP environments augmented by Early Childhood Special Education (ECSE) recommended practices designed to meet individual needs will ensure that all children will be participating in a well-organized, systematically-planned environment with direct instruction being provided to children who need this type of intervention.

Use this space to add additional resources appropriate for your state and local district.

SECTION

9

Procedural Safeguards

Section 619

Children with disabilities and their parents are afforded procedural safeguards as required by IDEA. Any SEA, state agency, or LEA that receives IDEA Part B funds shall establish and maintain procedures that ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a FAPE by such agencies. These procedures are discussed below.

Q. Under what conditions must "written prior notice" to the parents of the child be given?

A. Notice must be given whenever an agency:

- Proposes to initiate or change; or
- Refuses to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. The notice must be written in the native language of the parents, unless it clearly is not feasible to do so.

This notice must include:

- A description of the action proposed or refused by the agency;
- An explanation of why the agency proposes or refuses to take the action;
- A description of any other options that the agency considered and the reasons why those options were rejected;
- A description of each evaluation procedure, test, record, or report the agency used as a basis for the proposed or refused action;
- A description of any other factors that are relevant to the agency's proposal or refusal;
- A statement that the parents of a child with a disability have protection under the procedural safeguards and, if the notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and
- Sources for parents to contact to obtain assistance in understanding the provisions of this part.

Q. What is the "procedural safeguards notice" and is it different from the "prior written notice"?

A. Prior written notice is discussed above. The "procedural safeguards notice" must be given to the parents of a child with a disability, at a minimum:

- Upon initial referral for evaluation;
- Upon each notification of an IEP meeting and upon reevaluation of the child; and
- Upon registration of a complaint (request for a due process hearing).

The "procedural safeguards notice" must include: a full explanation of the procedural safeguards, written in the native language of the parents, unless it clearly is not feasible to do so, and written in an easily understandable manner, and under regulations promulgated by the Secretary relating to:

- Independent educational evaluation;
- Prior written notice;
- Parental consent;
- Access to educational records;
- Opportunity to present complaints;
- The child's placement during pendency of due process proceedings;
- Procedures for students who are subject to placement in an interim alternative educational setting;
- Requirements for unilateral placement by parents of children in private schools at public expense;
- Mediation;
- Due process hearings, including requirements for disclosure of evaluation results and recommendations;
- State-level appeals (if applicable in that state);
- Civil actions; and
- Attorneys' fees.

(Refer to section on *Mediation* for further information.)

Q. *What are the requirements related to due process?*

A. The SEA is required to develop a model form to assist parents in filing a complaint. Parents have the opportunity to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of their child, or the provision of a FAPE to the child. The parent of a child with a disability, or the attorney representing the child, must provide notice (which shall remain confidential) to the SEA or LEA and that notice shall include:

- the name and address of the residence of the child, and the name of the school the child is attending;
- a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem; and
- a proposed resolution of the problem to the extent known and available to the parents at the time.

At least 5 business days prior to a hearing each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing. A hearing officer may deny any party that fails to comply with this requirement from introducing the relevant evaluation(s) or recommendation(s) at the hearing without the consent of the other party.

Q. *Who conducts the due process hearing?*

A. Whenever a complaint is received, the parents involved have an opportunity for an impartial due process hearing, which shall be conducted by the SEA or by the LEA, as determined by state law or by the SEA.

A hearing may not be conducted by an employee of the SEA or the LEA involved in the education or care of the child.

Q. *What rights do parents have in relation to a due process hearing?*

A. Any party to the hearing or an appeal conducted as a result of the hearing have the following rights:

- the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
- the right to present evidence and confront, cross-examine, and compel the attendance of witnesses;
- the right to a written, or, at the option of the parents, electronic verbatim record of the hearing; and
- the right to written, or, at the option of the parents, electronic findings of fact and decisions. These findings and decisions must be made available to the public consistent with the requirements relating to the confidentiality of data, information, and records and must also be transmitted to the state special education advisory panel.

Q. *Can decisions made in due process hearings be appealed?*

A. A decision made in a hearing is final, unless it is appealed by one of the parties. If the hearing is conducted by an LEA, any party aggrieved by the findings and decision rendered in the hearing may appeal the findings and decision to the SEA. The SEA shall conduct an impartial review of the decision. The officer conducting the review shall make an independent decision upon completion of the review. Any decision made in an appeal is final, except that any party aggrieved by the findings and decision made in the appeal or any party who does not have the right to an appeal has the right to bring a civil action with respect to the complaint. This civil action may be brought in any state or district court of the United States without regard to the amount in controversy. The court involved in the civil action shall:

- Receive the records of the administrative proceedings;
- Hear additional evidence at the request of a party; and
- Basing its decision on the preponderance of the evidence, grant such relief as the court determines is appropriate.

Questions have been raised regarding the relationship between the extent of success of the parents and the amount of attorneys' fees a court may award. In addressing this question, the Senate Committee believes the amount of any award of attorneys' fees to a prevailing party under part B shall be determined in accordance with the law established by the Supreme Court in *Hensley v. Eckerhart*, 461 U.S. 424 (1983) and its progeny.

Q. *What happens to the child's placement during the dispute?*

A. Except as provided for procedures described below related to alternative educational settings, during the pendency of any proceeding, unless the SEA or LEA and the parents otherwise agree, the child shall remain in the then-current educational placement of the child, or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.

Q. *Under what circumstances are attorneys' fees awarded to parents?*

A. The district courts of the United States shall have jurisdiction of actions brought under this section without regard to the amount in controversy. In any action or proceeding brought under the procedural safeguards section of IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents of a child with a disability who is the prevailing

party. Fees awarded shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.

Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding for services performed subsequent to the time of a written offer of settlement to a parent if:

- The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;
- The offer is not accepted within 10 days; and
- The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

In addition, attorneys' fees may not be awarded relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action, or, at the discretion of the state, for a mediation that is conducted prior to the filing of a request for a due process hearing. An award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

The court shall reduce, accordingly, the amount of the attorneys' fees whenever the court finds that;

- The parent, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;
- The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;
- The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
- The attorney representing the parent did not provide to the school district the appropriate information in the due process complaint. However, the award may not be reduced if the court finds that the SEA or LEA unreasonably protracted the final resolution of the action or proceeding or there was a violation of procedural safeguards requirements.

Q. What are the requirements related to surrogate parents?

A. Procedures must be in place to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the state (when parental rights have been terminated by a court). These procedures must include the assignment of an individual (who shall not be an employee of the SEA, the LEA, or any other agency that is involved in the education or care of the child) to act as a surrogate for the parents.

Q. What happens when a child reaches the age of majority?

A. The state provides that when a child with a disability reaches the age of majority under state law (except for a child with a disability who has been determined to be incompetent under state law):

- the public agency shall provide any notice required to both the individual and the parents;
- all other rights accorded to parents under this part transfer to the child;
- the agency shall notify the individual and the parents of the transfer of rights; and
- all rights accorded to parents under this part transfer to children who are incarcerated in an adult or juvenile Federal, state, or local correctional institution.

If, under state law, a child with a disability who has reached the age of majority under state law, who has not been determined to be incompetent, but who is determined not to have the ability to provide informed consent with respect to their educational program, the state shall establish procedures for appointing the parent of the child, or if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of eligibility of the child.

Comments from the Senate Committee

As we stated in the 1986 report accompanying the legislation that added the attorneys' fees provisions: "It is the committee's intent that the terms 'prevailing party' and 'reasonable' be construed consistent with the U.S. Supreme Court's decision in *Hensley v. Eckerhart,* 461 U.S. 424, 440 (1983)." In this case, the Court held that:

> the extent of a plaintiff's success is a crucial factor in determining the proper amount of an award of attorneys' fees. Where the plaintiff has failed to prevail on a claim that is distinct in all respects from his successful claims, the hours spent on the unsuccessful claim should be excluded in considering the amount of a reasonable fee. Where a lawsuit consists of related claims, a plaintiff who has won substantial relief should not have his attorney's fees reduced simply because the court did not adopt each contention raised. But where the plaintiff achieved only limited success, the district court should award only that amount of fees that is reasonable in relation to the results obtained. *Senate Report* p. 26

SECTION

10

Mediation

Section 615

Mediation is a process in which a neutral third party helps parents and school officials identify and discuss issues of concern. The goal of mediation is for the parties involved to explore options and find mutually acceptable solutions. The mediation process stresses dialogue and creative problem-solving.

Q. Whose responsibility is it to ensure that procedures are established and implemented to allow parties to disputes to resolve conflicts through a mediation process?

A. Under a new requirement, SEAs and LEAs must ensure that procedures are in place to provide mediation.

Q. Can mediation be mandated?

A. No. However, SEAs or LEAs are required to offer mediation and ensure that procedures are established and implemented to allow parties to use mediation. The mediation process must be voluntary on the part of the parties, not used to deny or delay a parent's right to a due process hearing or to deny any other rights; and conducted by a qualified and impartial mediator trained in effective mediation techniques.

Q. What determines a "qualified and impartial" mediator?

A. The mediator may not be an employee of the LEA or SEA and may not be a person who has a personal or professional conflict of interest.

Q. What happens if a parent chooses not to go through the mediation process?

A. An LEA or SEA may establish procedures to require parents who choose not to use the mediation process to meet, at a time and place convenient for the parent, with a "disinterested party"—who is under contract with a parent training and information center, community parent resource center, or an appropriate alternative dispute resolution entity—who would encourage and explain the benefits of mediation.

Q. Who chooses the mediator?

A. The state must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services. When a mediator is not chosen at random, then both the parents and the agency are involved in the selection process.

Q. Who pays for the cost of mediation?

A. The state. These funds are available through IDEA Part B, sec.611(f)(C), where part of the 25% of funds designated by the SEA can be used to establish and implement the mediation process, including providing for the costs of mediators and support personnel.

Q. Who determines that the mediation agreement be adhered to?

A. An agreement to the dispute in the mediation process must be set forth in a written mediation agreement. Because both parties have agreed to mediation it is understood that both parties will adhere to the agreement; if not, due process would follow.

Q. Can attorneys be used in mediation?

A. There is no reference in the statute to the use of attorneys. In addition, the Senate and House Committees Report neither requires nor prohibits the use of attorneys.

Q. Is it necessary to provide procedural safeguards notice upon entering mediation?

A. Yes. Prior written notice shall be given to the parents of the child when engaging in mediation.

Q. Can the results in the mediation process be used as evidence if due process or civil proceedings follow?

A. Provisions were added to the law to ensure that discussions that occur during mediation must be confidential and not used as evidence in due process hearings or civil proceedings, and the parties may be required to sign a confidentiality pledge. However, it is only the discussion prior to the written agreement that must remain confidential, not the final written agreement.

Q. Can attorneys' fees be awarded for mediation?

A. Attorneys' fees need not be awarded for mediation at the discretion of the state for a mediation that is conducted prior to the filing of a complaint. In the past, case law has allowed for the award of attorneys' fees for assistance during mediation.

40 • SOURCE: *IDEA 1997: LET'S MAKE IT WORK*, 1998, RESTON, VA: THE COUNCIL FOR EXCEPTIONAL CHILDREN

Comments from the Senate Committee

The Committee believes that, in states where mediation is now offered, mediation is proving successful both with and without the use of attorneys. Thus, the Committee wishes to respect the individual state procedures with regard to attorney use in mediation, and, therefore, neither requests nor prohibits the use of attorneys in mediation. The Committee is aware that, in states where mediation is being used, litigation has been reduced, and parents and schools have resolved their differences amicably, making decisions with the child's best interest in mind. It is the Committee's strong preference that mediation become the norm for resolving disputes under IDEA. The Committee believes that the availability of mediation will ensure that far fewer conflicts will proceed to the next procedural steps, formal due process and litigation, outcomes that the Committee believes should be avoided when possible.

The Committee intends that nothing in this bill shall supersede any parental access rights under the Family Educational Rights and Privacy Act of 1974 or foreclose access to information otherwise available to the parties. Mediation parties may enter into a confidentiality pledge or agreement prior to the commencement of mediation. An example of such an agreement follows:

- The mediator, the parties, and their attorneys agree that they are all strictly prohibited from revealing to anyone, including a judge, administrative hearing officer, or arbitrator the content of any discussions which take place during the mediation process. This includes statements made, settlement proposals made or rejected, evaluations regarding the parties, their good faith, and the reasons a resolution was not achieved, if that be the case. This does not prohibit the parties from discussing information, on a need-to-know basis, with appropriate staff, professional advisors, and witnesses.
- The parties and their attorneys agree that they will not at any time, before, during, or after mediation, call the mediator or anyone associated with the mediator as a witness in any judicial, administrative, or arbitration proceeding concerning this dispute.
- The parties and their attorneys agree not to subpoena or demand the production of any records, notes, work product, or the like of the mediator in any judicial, administrative, or arbitration proceeding concerning this dispute.
- If, at a later time, either party decides to subpoena the mediator or the mediator's records, the mediator will move to quash the subpoena. The party making the demand agrees to reimburse the mediator for all expenses incurred, including attorney fees, plus the mediator's then-current hourly rate for all time taken by the matter.
- The exception to the above is that this agreement to mediate and any written agreement made and signed by the parties as a result of mediation may be used in any relevant proceeding, unless the parties agree in writing not to do so. Information which would otherwise be subject to discovery, shall not become exempt from discovery by virtue of it being disclosed during mediation.

Senate Report, p. 27

SOURCE: *IDEA 1997: LET'S MAKE IT WORK*, 1998, RESTON, VA: THE COUNCIL FOR EXCEPTIONAL CHILDREN · 41

Resources on Mediation

Masotti and Masotti v. Tuskin Unified School District, 806 F. Supp. 221 (C.D. Calif. 1992); *E.M. v. Millville Board of Education*, 849 F. Supp. 312 (D.N.J. 1994). For a more detailed discussion of mediation and IDEA see *Mediation and the Individuals with Disabilities Education Act (IDEA)*, Congressional Research Service Report 96-211, by Nancy Jones.

Use this space to add additional resources appropriate for your state and local district.

SECTION

11

Behavior and Discipline

Sections 613 and 615

School personnel are required to be knowledgeable of statutory regulations relating to suspensions and expulsions of students with disabilities. Although the IDEA, Section 504, and their implementing regulations are reasonably detailed, specific guidelines are often lacking for the suspension or expulsion of students with disabilities. As a result, school personnel work to balance the special education needs and rights of students with disabilities with the school's need to provide a safe learning environment. Readers are cautioned to read this complete section in order to avoid taking information out of context. In addition, readers are encouraged to consult current Department of Education regulations and any recent court decisions affecting this aspect of the law.

Q. When must an LEA afford protections under IDEA to a child who is currently not identified as a child with a disability?

A. A school must consider the legal rights of a child:

- When the child's parent has expressed to the school, in writing, that the child needs special education and related services;
- When the behavior or performance of the child demonstrates the need for such services;
- When the parent has requested an evaluation to determine if the child has a disability;
- When a staff member of the educational agency has expressed concern about the behavior or performance of the child to another staff member; or
- When the child's parent is unable to communicate to the school in writing, but has expressed concern that the child may need special education and related services through some other means.

Q. What is the definition of a suspension?

A. A suspension is generally defined as a short- or long-term cessation of educational services. Statutes regulate the allowable length of the suspension, the reasons for which a suspension can be ordered, and the procedure school personnel must follow in implementing a suspension.

Q. What basic due process rights are school personnel required to avail to a student with disabilities as per all students prior to suspension?

A.

- The student must be advised of the reasons for the proposed suspension and given an opportunity to explain their version of the incident prompting suspension.
- The parent or guardian of a suspended student should be given prompt notice of the suspension and the reason for it.
- The suspended student, parent, or guardian may appeal the suspension to another school official.

Q. Is a temporary suspension of students with disabilities considered a change of placement?

A. Under normal circumstances, school personnel may temporarily (short term) suspend a student with a disability using the same procedures in place for nondisabled students as long as such suspension does not result in a change of placement. Courts have determined that the school's need to remove a disruptive student from the school environment temporarily outweighs the entitlement to a free appropriate public education for the student with a disability. Since the duration of the suspension is limited, it is normally not of a significant length to be considered a change of placement.

Q. What action should be taken when a student with a disability receives cumulative suspensions?

A. The circumstances of a series of suspensions for students with disabilities which cumulatively approach 10 days in a single school year should be reviewed to determine whether or not a consideration for a change in placement is warranted. The IEP and accommodations should be reviewed as appropriate. The Office of Civil Rights (OCR) outlines the following factors to be considered in determining whether or not a series of suspensions constitute a change in placement under Section 504 or IDEA, including the:

- Length of each suspension;
- Proximity of the suspensions to one another; and
- Total amount of time the student was excluded from the classroom.

The 1997 Amendments to IDEA suggest that the total amount of time cannot exceed 10 days in a given school year. Readers are cautioned that they should consult current Department of Education regulations and any recent court decisions affecting this aspect of the law.

Q. What is the definition of a long-term suspension for students with disabilites?

A. Long-term suspension is generally defined as the termination of educational services for more than 10 school days or for the remainder of the school semester or year. The complete termination or cessation of educational services is not an option for students with disabilities under the 1997 Amendments to IDEA. There are provisions for a change in placement but under no circumstances is cessation of services (i.e., FAPE), including transportation or other related services, permitted for students with disabilities.

Q. How is expulsion for students with disabilities defined?

A. An expulsion is generally defined as a complete termination of educational services for more than 10 days per school year. The complete termination or cessation of educational services is not an option for students with disabilities under the 1997 Amendments to IDEA. There are provisions for a change in placement but under no circumstances is cessation of services (i.e., FAPE), including transportation or other related services, permitted for students with disabilities.

Q. Under what circumstances may a school unilaterally change the placement of a student with a disability?

A. The 1997 Amendments to IDEA, effective upon enactment (June 4, 1997), do not allow for the cessation of special education services, even to dangerous and chronically disruptive students who violate district codes of conduct for more than 10 days. It does give school personnel more authority to discipline such students by expanding the provision that allows maximum 45-day alternative placements for students who bring firearms or other weapons and illegal drugs to school.

School personnel may unilaterally order a change in placement:

- To an appropriate Interim Alternative Educational Setting (IAES), another setting, or suspension for not more than 10 school days; and
- To an appropriate IAES for not more than 45 days if the:
  -student brings a weapon to school or school function; or
  -student possesses/uses/sells illegal drugs

As previously noted, school personnel will still be able to suspend a special education student who violates a discipline policy as long as such suspension does not result in a change of placement.

Q. What must be provided in any IAES?

A. Provisions include:

- Participation in the general education curriculum, including physical education;
- Services enabling the student to achieve IEP goals; and
- Services to address the behavior.

Q. Are there any limitations on the duration of a student's placement in an IAES?

A. A student may be placed in an IAES for no more than 45 school days without parental consent only in the event of weapons and/or illegal drugs violations. During that period, the IEP team, including the parents, may opt to change the student's "permanent" placement. If no such change is made, the student returns to the prior setting after the IAES period is completed.

Q. Must parents be notified when a child is placed in an IAES?

A. Yes. Parents must be provided a copy of their procedural safeguards, information about their right to challenge the change in placement, and their right to challenge any manifestation determination.

Q. Who must participate in the IEP team meeting following a behavior resulting in a recommendation of a change in placement?

A. Participants must include:

- The regular members of the IEP team (see section on IEPs);
- A parent; and
- Other personnel qualified to determine the relationship between the child's disability and the behavior subject to the discipline.

Q. What must be determined by the IEP team at this meeting?

Before or not later than 10 days after the disciplinary action, if the LEA did not conduct a functional behavioral assessment and implement a behavioral intervention plan prior to behavior resulting in the suspension, the LEA shall conduct an IEP meeting to develop an assessment plan or if the plan already exists, the IEP team shall review and revise as necessary.

However, before a special education student can be excluded from school for more than 10 days, an IEP team meeting MUST take place. There are two major decisions the team must make:

- Whether the student's existing program was appropriate to his or her unique needs, and implemented as designed; and
- Whether the student's behavior is a manifestation of his or her disability.

If the IEP team concludes that the misbehavior is a manifestation of the student's disability and/or that the student's special education program is not appropriate, then long-term suspension or expulsion must not occur. Instead, the student's individualized education program must be revised and the student provided with an appropriate special education program and placement.

If the IEP team concludes that the student's disability did not in any way relate to the student's misbehavior nor was the student's IEP inadequate in any way, the long-term exclusion process may go forward using regular

school district procedures and practices. However, special education services must continue to be provided in whatever IAES is deemed appropriate by the IEP team.

Q. What sources of information must be considered when conducting a manifestation determination?

A. Considerations include:

- Evaluation and diagnostic results (including relevant information supplied by parents);
- Observations of the child;
- The current IEP and placement; and
- All other relevant sources of information.

Q. What criteria must be met to determine that a behavior is a manifestation of a child's disability?

A. The following criteria must be met:

- FAPE was provided by the existing IEP and placement; and
- The child's disability impaired the child's ability to understand the impact and consequences of the behavior; or
- The child's disability impaired the child's ability to control the behavior.

Q. What if the manifestation determination finds that the behavior is not a result of the child's disability and a parent disagrees?

A. The parent may request a due process hearing, which must be provided by the SEA or LEA on an expedited schedule. The student remains in the current setting during the pendency of the appeal, except in the event of violation of weapons or illegal drugs.

Q. What if the behavior was determined to be a manifestation of the student's disability?

A. The student may be placed in an IAES setting for no more than 45 days, given parental consent.

Q. May LEAs remove students from their current setting without parental permission?

A. Yes. A hearing officer may order a change in placement to an IAES for not more than 45 days for very dangerous behavior, as well as weapons or drugs as defined above, if the hearing officer determines that the LEA has demonstrated by substantial evidence that maintaining the current placement is substantially likely to result in injury to the student or others; considers the appropriateness of the current placement; considers whether the LEA has made reasonable efforts to minimize risk of harm in current placements; and determines that the IAES meets requirements delineated in law. In addition, the school may unilaterally place a student in an IAES for weapons or illegal drugs violation.

Note: A judge or the courts continue to have authority to remove a student from educational settings and services in accordance with state and federal laws.

Q. In the case of a disagreement between parent and school, how is it demonstrated that maintaining the current placement would be likely to result in injury to the child or to others?

A. An impartial hearing officer is permitted to make such a determination if the school district:

- Provides substantial evidence that continued current placement would be substantially likely to result in injury to the child or others; and
- Demonstrates that the proposed IAES meets the requirements of such programs.

The hearing officer must consider:

- Whether or not the child's current placement is appropriate; and
- Whether the public agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services.

If the hearing officer agrees with the school, the child may be placed in the proposed IAES. If the hearing officer agrees with the parents, the child is returned to the previous setting.

Q. May a school district appeal the hearing officer's decision?

A. Yes. The school may seek a temporary restraining order that would result in the child being placed in the IAES.

Q. May the parent appeal the hearing officer's decision?

A. Yes. The parents may file for a due process hearing. The student would be placed in the IAES during the first 45 days of this appeal, after which the student would be returned to the original setting.

Q. What if parental consent is not given for an IAES?

A. The SEA or LEA must schedule a due process hearing.

Q. What placement options are available after the completion of a 45-day IAES?

A. Placement options include the following:

- The child may return to the previous placement.
- During the interim period, the IEP team may change the child's placement with the parent's consent.
- During the interim period, the IEP team may recommend a change in the child's placement even though the parent opposes.

Q. If parents disagree with a proposed placement change after an IAES placement, where is the student placed, pending due process action?

A. The child shall remain in the current placement (the child's placement prior to the IAES) unless school per-

sonnel maintain that it is dangerous for the child to be in the current placement during the pendency of the due process hearings at which time the LEA may request an expedited hearing.

Q. Should law enforcement officials be notified of criminal activity committed by a student with a disability?

A. Nothing in the 1997 Amendments to IDEA prohibits an agency from reporting criminal acts that are committed by a student with a disability to appropriate authorities or to prevent state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student with a disability. An agency reporting a crime committed by a student with a disability shall ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by appropriate authorities to whom it reports the crime.

Q. What happens when disciplining students not yet eligible for special education?

A. A student who has not been determined to be eligible for special education and related services and who has engaged in behavior that violated the code of conduct of the LEA, is protected by all of the procedural safeguards under Part B of IDEA, *if* the LEA had knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred. An LEA shall be deemed to have had knowledge that a student has a disability if the parents of the student have expressed concern in writing (unless the parents are illiterate or have a disability that prevents compliance with the requirements of the clause) to personnel of the appropriate educational agency that the student needs special education and related services; the behavior or performance of the student demonstrates the need for such services; the parent of the student has requested an evaluation of the student under section 614, or the student's teacher, or other LEA personnel, has expressed concern about the behavior or performance to the student to the director of special education or to other agency personnel.

If the LEA does not have knowledge, or could not reasonably have known, that a student is a student with a disability prior to taking disciplinary measures against the student, the student may be subjected to the same disciplinary measures applied to students without disabilities who engaged in comparable behaviors, unless it is otherwise determined that the student is a student with disabilities.

If a requeset is made for an evaluation of a student during the time period in which the student is subject to disciplinary measures, the evaluation shall be conducted in an expedited manner. If the student is determined to be a student with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services except that the student shall remain in the educational placement determined by school authorities.

Resources on Behavior and Discipline

Algozzine, B., Ruhl, K., & Ramsey, R. (1991). *Behaviorally disordered? Assessment for identification and instruction.* 37pp. #P339. Reston, VA: The Council for Exceptional Children.
Choose the best approach to assessment for students who have behavioral disorders.

Breen, M. J., & Fiedler, C. R. *Behavioral approach to assessment of youth with emotional/behavioral disorders.* Austin: Pro-Ed, 1996.
This book aids practitioners and assessment personnel in the assessment of students with emotional and/or behavioral disorders (EBD) for the purpose of making educational placement and programming decisions consistent with Federal and state diagnostic guidelines.

Walker, H. M. (1997). *First step: An early intervention program for antisocial kindergartners.* #S5237. Available from The Council for Exceptional Children.
A collaborative home and school kit designed to divert antisocial kindergartners from a path leading to problems in school and the community. Screens for children at risk, provides strategies for teaching adaptive behavior patterns, and shows parents how to work with their children.

Safe Schools—Safe Students: Guidelines for Implementing Discipline Procedures Under the New Individuals with Disabilities Education Act (IDEA). A Resource Guide for School Boards, Superintendents, Directors, Principals, Teachers, Support Staff, and Parents. 1997. Council of Administrators of Special Education, Inc., a Division of The Council of Exceptional Children. Available from The Council for Exceptional Children, #D5236.

TEACHING Exceptional Children, 30(4) is a special focus issue on discipline. Articles address the following topics:

- Implementing a multilevel comprehensive school discipline program to enhance academic and social outcomes for all students.
- Managing disruptive classroom behaviors of students with disabilities in inclusive settings.
- Preventing violence in middle school.
- Coping effectively with noncompliant behavior.
- Preventing antisocial behavior among at-risk kindergartners.
- Preventing aggressive behavior in students with emotional disturbances.

U.S. Department of Education, Office of Special Education and Rehabilitative Services, OSEP Memorandum 97-7 dated September 19, 1997. This memorandum provides initial guidance on the requirements of IDEA as they relate to the removal of children with disabilities from their current educational placement for 10 school days or less.

Use this space to add additional resources appropriate for your state and local district.

SECTION

12

State and Local Fiscal Management Responsibilities

Sections 611 and 612

To receive Part B funds in any given year, a state must have in effect policies and procedures to ensure the requirements of IDEA, Part B, Section 612 are met. These responsibilities include 22 components.

In order to receive Part B funds from the state, an LEA must have in effect policies, procedures, and programs that are consistent with the 22 components of Section 612 plus additional provisions included in Section 613.

Most of these state and local responsibilities are addressed in other sections throughout this document with the exception of the following, which are described here.

Q. What is the central guarantee of the IDEA?

A. The state must make available a FAPE to all children with disabilities residing in the state between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school.

Q. Is there any limitation on this requirement?

A. The obligation to make a FAPE available to all children with disabilities does not apply with respect to children:

- Ages 3 through 5 and 18 through 21 in a state to the extent that its application to those children would be inconsistent with state law or practice, or the order of any court, respecting the provision of public education to children in those age ranges; and
- Ages 18 through 21 to the extent that state law does not require that special education and related services under Part B be provided to children with disabilities who, in the educational placement prior to their incarceration in an adult correctional facility:
  - were not actually identified as being a child with a disability; or
  - did not have an IEP.

Q. How does the IDEA define a child with a disability?

(Also see section on Developmental Delay.)

A. A child with a disability is a child with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (hereinafter referred to as "emotional disturbance"), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and who, by reason thereof, needs special education and related services.

Q. Is there an obligation to find all children who may be eligible for special education and related services?

A. All children with disabilities residing in the state, including children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services must be identified, located, and evaluated, and a practical method must be developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

Q. What is meant by the obligation of each SEA and LEA to educate all eligible children in the "least restrictive environment" (LRE)?

A. To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, must be educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the general educational environment shall occur only when the nature or severity of the disability of a child is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Q. In order to facilitate the LRE provision, are there requirements affecting a state's distribution of state special education funds?

A. If a state uses a funding mechanism by which the state distributes state funds on the basis of the type of setting in which a child is served, the funding mecha-

nism must not result in placements that violate the LRE requirement.

If the state does not have policies and procedures to ensure compliance with this provision, the state must provide the Secretary an assurance that it will revise the funding mechanism as soon as feasible to ensure that such mechanism does not result in such placements.

Q. What safeguards are built into IDEA to guard against the inappropriate use of suspensions and expulsions in relation to children with disabilities?

A. The SEA must examine data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities:

- Aamong LEAs in the state; or
- Compared to such rates for nondisabled children within such agencies.

If such discrepancies are occurring, the SEA must review and, if appropriate, revise (or require the affected SEA or LEA to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of behavioral interventions, and procedural safeguards, to ensure that such policies, procedures, and practices comply with IDEA.

Q. What data will be collected on children with disabilities?

A. Each state that receives assistance under Part B, and the Secretary of the Interior, must provide data each year to the Secretary on the number of children with disabilities, by race, ethnicity, and disability category, who:

- Are receiving a FAPE;
- Are receiving early intervention services;
- Are participating in general education;
- Are in separate classes, separate schools or facilities, or public or private residential facilities;
- For each year of age from age 14 through 21, stopped receiving special education and related services because of program completion or other reasons and the reasons why those children stopped receiving special education and related services;
- From birth through age 2, stopped receiving early intervention services because of program completion or for other reasons;
- Are removed to an interim alternative educational setting, and the acts or items precipitating those removals; and
- Are subject to long-term suspensions or expulsions.

Further, the Secretary may require other data to be collected and may permit states and the Secretary of the Interior to obtain data through sampling.

Finally data must be provided each year on the number of infants and toddlers, by race and ethnicity, who are at risk of having substantial developmental delays, and who are receiving early intervention services under Part C.

Q. What must states do to determine if significant disproportionality based on race is occurring related to IDEA?

A. Each state and the Secretary of the Interior, must provide for the collection and examination of data to determine if significant disproportionality based on race is occurring in the state with respect to:

- The identification of children as children with disabilities, and in accordance with a particular disability category; and
- The placement in particular educational settings of such children.

If it is determined that there is significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of such children, the state or the Secretary of the Interior, as the case may be, must provide for the review and, if appropriate, revision of the policies, procedures, and practices used in such identification or placement to ensure that such policies, procedures, and practices comply with the requirements of IDEA.

Q. Is there still a Part B State Plan and if so how often does it need to be submitted for approval to the U.S. Department of Education?

A. As long as a state has on file with the Secretary policies and procedures that demonstrate that the state meets the requirements of IDEA, the state is considered to have met IDEA requirements to receive a Part B state grant.

The Secretary may require a state to modify its application, only to the extent necessary to ensure the state's compliance with Part B, in the following circumstances:

- The provisions of IDEA are amended (or the regulations developed to carry out IDEA are amended);
- There is a new interpretation of IDEA by a Federal Court or the state's highest court; or
- There is an official finding of noncompliance with Federal law or regulations.

Except for the circumstances described above, an application submitted by a state remains in effect until the state submits to the Secretary modifications the state determines are necessary.

The Secretary shall not make a final determination that a state is not eligible to receive a Part B grant until after providing the state:

- With reasonable notice; and
- With an opportunity for a hearing.

Q. What opportunities are there for public comment on the state policies and procedures?

A. Prior to the adoption of any policies and procedures (including any amendments to such policies and procedures), a state must ensure that there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities.

Q. What is the state's responsibility for ensuring the requirements of Part B are met?

A. The SEA is responsible for ensuring that:

- The requirements of Part B are met; and
- All educational programs for children with disabilities in the state, including all such programs administered by any other state or local agency:
  - are under the general supervision of individuals in the state who are responsible for educational programs for children with disabilities; and
  - meet the educational standards of the SEA.

This however does not limit the responsibility of agencies in the state other than the SEA to provide, or pay for some or all of the costs of a FAPE for any child with a disability in the state.

A state may not reduce medical or other assistance available, or alter eligibility, under Titles V (Maternal and Child Health) and XIX (Medicaid) of the Social Security Act with respect to the provision of a FAPE appropriate public education for children with disabilities in the state.

There is one possible exception to the SEA's responsibility. The Governor (or another individual pursuant to state law), consistent with state law, may assign to any public agency in the state the responsibility of ensuring that the requirements of Part B are met with respect to children with disabilities who are convicted as adults under state law and incarcerated in adult prisons.

Q. Who is responsible for paying for special education and related services?

A. IDEA specifically notes the responsibility of agencies in the state other than the SEA to provide, or pay for some or all of the costs of a FAPE for any child with a disability in the state.

In each state, the Chief Executive Officer or designee of the officer must ensure that an interagency agreement or other mechanism for interagency coordination is in effect between the SEA and any public agencies, other than education agencies, obligated under federal or state law, or assigned responsibility under state policy or interagency agreement or other interagency coordination mechanism to provide or pay for any services that are also considered special education or related services.

This requirement can be met through:

- State statute or regulation;
- Signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or
- Other appropriate written methods as determined by the Chief Executive Officer of the state or designee of the officer.

This agreement or mechanism must include provisions for all services needed to ensure the availability of FAPE, including the provision of services during the pendency of any disputes related to the agreement.

The agreement or mechanism must include the following:

- An identification of, or a method for defining, the financial responsibility of each agency for providing services that are also considered special education or related services such as, but not limited to, assistive technology devices, assistive technology services, related services, supplementary aids and services, and transition services that are necessary to ensuring FAPE to children with disabilities within the state.

In addition, the financial responsibility of each public agency including the state Medicaid agency and other public insurers of children with disabilities shall precede the financial responsibility of the LEA (or the SEA responsible for developing the child's IEP).

- The conditions, terms, and procedures under which an LEA shall be reimbursed by other agencies;
- Procedures for resolving interagency disputes (including procedures under which LEA may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism; and
- Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in the agreement or mechanism.

Any public agency, other than an educational agency, obligated or assigned responsibility (under federal or state law or policy or the interagency agreement or mechanism) to provide or pay for a service covered in the agreement or mechanism must fulfill that obligation or responsibility either directly or through contract or other arrangement.

If a public agency other than an educational agency fails to provide or pay for the special education and related services described in this agreement or mechanism, the LEA (or SEA responsible for developing the child's IEP) must provide or pay for the services to the child. The LEA or state agency may then claim reimbursement for the services from the public agency that failed to provide or pay for such services and that public agency must reimburse the LEA or SEA pursuant to the terms of the interagency agreement or other mechanism according to the procedures established in the agreement.

Q. Are states required to maintain fiscal effort for special education and related services? Can these requirements be waived?

(See discussion on LEA use of funds later in this section.)

A. Federal Part B funds cannot be commingled with state funds. With the exception of the ability of LEAs to supplant some Part B funds under limited circumstances, funds paid to a state under Part B will be used to supplement the level of Federal, state, and local funds (including funds that are not under the direct control of SEAs or LEAs) expended for special education and related services provided to children with disabilities and in no case to supplant such Federal, state, and local funds. The exception to this is when the state provides clear and convincing evidence that all children with disabilities have available to them a FAPE, in which case the Secretary may waive, in whole or in part, these requirements if the Secretary concurs with the evidence provided by the state.

The Secretary must, by regulation, establish procedures (including objective criteria and consideration of the results of compliance reviews of the state conducted by the Secretary) for determining whether to grant a waiver.

The state cannot reduce the amount of state financial support for special education and related services for children with disabilities, or otherwise make available, because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.

Q. Are there exceptions to this and what procedures would be followed if a state does not maintain support?

A. If the state fails to maintain fiscal support, the Secretary shall reduce the allocation of funds under Part B for any fiscal year following the fiscal year in which the state fails to maintain support by the same amount by which the state fails to meet the requirement.

The Secretary may waive this requirement for 1 fiscal year at a time, if the Secretary determines that:

- Granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforseen decline in the financial resources of the state; or
- The state meets the standard for a waiver (as described previously, related to the state's providing FAPE state wide). If, for any year, a state fails to meet this requirement including any year for which the state is granted a waiver, the financial support required of the state in future years shall be the amount that would have been required in the absence of that failure and not the reduced level of the state's support.

Q. Are there requirements for LEAs to submit policies and procedures to the state? If so, how often and are there public participation requirements?

A. As long as the LEA or state agency has on file with the SEA policies and procedures that demonstrate that the LEA, or state agency, meets the requirements included in Section 613 (a) of IDEA, the SEA must consider the LEA or state agency, to be eligible for receiving a grant under Part B.

The SEA may require an LEA to modify its application, only to the extent necessary to ensure the LEA's compliance with Part B or state law, in the following circumstances:

- The provisions of IDEA are amended (or the regulations developed to carry out IDEA are amended); or
- There is a new interpretation of IDEA by Federal or state courts; or
- There is an official finding of noncompliance with Federal or state law or regulations.

Except for the circumstances described above, an application submitted by an LEA remains in effect until it submits to the SEA any modifications the LEA determines to be necessary.

The LEA must provide the SEA with information necessary to enable the SEA to carry out its duties under Part B including information relating to the performance of children with disabilities participating in programs carried out under Part B.

If the SEA determines that an LEA or state agency is not eligible for a grant under Part B the SEA must notify the LEA or state agency of that determination and must provide the agency with reasonable notice and an opportunity for a hearing.

If the SEA, after reasonable notice of opportunity for a hearing, finds that an LEA or state agency that has been determined to be eligible is failing to comply with any requirements described in Section 613(a) of IDEA, the SEA must reduce or discontinue any further pay-

ments to the agency until the SEA is satisfied that the agency is complying with that requirement.

In carrying out its responsibilities under this requirement the SEA must consider any decision made in a hearing held under the Procedural Safeguards Section of IDEA that is adverse to the LEA or state agency involved in that decision.

Any state agency or LEA in receipt of a notice as described previously must, by means of a public notice, take such measures as may be necessary to bring the pendency of an action related to this action to the attention of the public within the jurisdiction of the agency.

Regarding public notice, the LEA must make available to parents of children with disabilities and to the general public all documents relating to the eligibility of the agency under Part B.

Q. What are the requirements for the use of Part B funds for LEAs?

A. Federal Part B funds must be expended in accordance with Part B requirements and must be used only to pay the excess costs of providing special education and related services to children with disabilities. These funds:

- Must be used to supplement state, local, and other Federal funds and not to supplant such funds; and
- Cannot be used, except as described below to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.

Q. Are there any exceptions to these requirements?

A. Yes. An LEA may reduce the level of expenditures where such reduction is attributable to:

- The voluntary departure, by retirement or otherwise, or departure for just cause, of special education personnel;
- A decrease in the enrollment of children with disabilities;
- The termination of the obligation of the agency, consistent with Part B, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the SEA, because the child:
  - has left the jurisdiction of the agency;
  - has reached the age at which the obligation of the agency to provide a FAPE to the child has terminated; or
  - no longer needs such program of special education; or
- The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.

There is an additional exception to these local fiscal requirements. For any fiscal year for which amounts appropriated for Part B exceed $4,100,000,000, an LEA may treat as local funds, for these purposes, up to 20% of the amount of funds it receives under Part B that exceeds the amount it received under Part B for the previous fiscal year.

However, if an SEA determines that an LEA is not meeting the requirements of Part B the SEA may prohibit the LEA from treating funds received under Part B as local funds for any fiscal year, only if it is authorized to do so by the state constitution or a state statute.

SECTION

13

Private School Placements

Section 612

The law makes provision for three situations in which private placements of children with disabilities occur:

Voluntary parent placement: When parents place a child in a private school, such as a parochial school, for reasons not generally related to special education needs.

Agency placement: When a public agency, in order to meet the requirements of a FAPE, places a child in a private school or facility.

Unilateral parent placement: When parents place a child in a private school, for the purpose of providing special education and related services to their child, without the consent of or referral by a public agency.

Voluntary Parent Placement

Q. What must be made available to children with disabilities whose parents have enrolled them in private schools?

A. To the extent consistent with the number and location of these children in the state, provisions must be made for the participation of children with disabilities, whose parents have enrolled them in private elementary and secondary schools, in the Part B program.

Q. How is "participation" determined?

A. Children with disabilities whose parents have enrolled them in private elementary and secondary schools must be provided special education and related services according to the following:

- Amounts expended for the provision of those services by an LEA shall be equal to a proportionate amount of Federal Part B funds; and
- Such services may be provided to children with disabilities on the premises of private, including parochial, schools, to the extent consistent with law.

Q. Do the Child Find requirements apply to children with disabilities who are enrolled voluntarily by their parents in private schools?

A. Yes. The requirements relating to Child Find apply to children with disabilities in the state who are enrolled in private, including parochial, elementary and secondary schools. This requirement states that all children with disabilities residing in the state, including children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated, and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

Agency Placement

Q. What are the basic conditions under which a public agency can place a child with a disability in a private school?

A. Children with disabilities in private schools and facilities must be provided special education and related services, in accordance with an IEP, at no cost to their parents, if such children are placed in, or referred to, such schools or facilities by the state or appropriate LEA.

Q. What is the state's responsibility with regard to children with disabilities placed in private schools by a public agency?

A. The SEA shall determine whether such schools and facilities meet standards that apply to SEAs and LEAs and that children served have all the rights they would have if served directly by the SEAs and LEAs. Thus, the SEA must accredit all such schools and facilities.

Unilateral Parent Placement

Q. What are the circumstances under which public agencies must pay for private unilateral placement of children with disabilities?

A. In general, LEAs are not required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made a FAPE available

to the child and the parents elected to place the child in such private school or facility.

However, if the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a FAPE available to the child in a timely manner prior to that enrollment.

Q. Are there any limitations that can be placed on the reimbursement to the parents?

A. There are several situations in which the reimbursement may be reduced or denied:

- If at the most recent IEP meeting that the parents attended prior to removing the child from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the public agency to provide a FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or
- Ten business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency as described previously.
- If, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements in Part B, of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation; or
- Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

Q. Are there protections for parents with respect to these limitations?

A. The cost of reimbursement may not be reduced or denied for the failure of the parent to provide notice if:

- The parent is illiterate and cannot write in English;
- Compliance with the notice requirement would likely result in physical or serious emotional harm to the child;
- The school prevented the parent from providing such notice; or
- The parents had not received notice of their responsibility to provide notice to the agency.

Resources on Private School Placement

Katsiyannis, A., & Maag, J. W. (1997). Ensuring appropriate education: Emerging remedies, litigation, compensation, and other legal considerations. *Exceptional Children, 63,* 451-462.

Six examples of court cases in which monetary damages were deemed appropriate or were awarded are described.

Lange, C. M., & Ysseldyke, J. E. (1998). School choice policies and practices for students with disabilities. *Exceptional Children, 64,* 255-270.

Insights as to types of students and their success in various alternative programs are presented. The impact on students and school districts is examined including financial responsibilities, educational outcomes, and policy implications.

Osborne, A. G., Jr., DiMattia, P., & Russo, C. J. (1998). Legal considerations in providing special education services in parochial schools. *Exceptional Children, 64,* 385-394.

Use this space to add additional resources appropriate for your state and local district.

SECTION

14

Performance Goals, Indicators, and Assessments: What the State Has to Do

Section 612

By July 1, 1998, each state must:

- Establish goals for the performance of children with disabilities that are consistent, to the maximum extent appropriate, with other goals and standards for children established by the state; and
- Establish performance indicators the state will use to assess progress toward achieving those goals that, at a minimum, address the performance of children with disabilities on assessments, drop-out rates, and graduation rates.

Effective June 4, 1997, each state must ensure that children with disabilities are included in general state- and district-wide assessment programs, with appropriate accommodations, where necessary.

Q. What about those children who cannot participate in state- and district-wide assessment programs?

A. As appropriate, the SEA or LEA must:

- Develop guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in state- and district-wide assessment programs; and
- Develop and, beginning not later than July 1, 2000, conduct those alternate assessments.

Q. What must occur subsequent to the establishment of performance goals and indicators?

A. The following must occur:

- Every 2 years, the state will report to the Secretary and the public on the progress of the state, and of children with disabilities in the state, toward meeting the goals.
- Based on its assessment of that progress, the state must revise its state improvement plan as may be needed to improve its performance, if the state is participating in the State Improvement Program.

Q. How shall the information resulting from state- and district-wide assessments be made available to the public?

A. The SEA shall make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:

- The number of children with disabilities participating in regular assessments;
- The number of those children participating in alternate assessments;
- The performance of those children on regular assessments (beginning not later than July 1, 1998) and on alternate assessments (not later than July 1, 2000), if doing so would be statistically sound and would not result in the disclosure of performance results identifiable to individual children;
- Data relating to the performance of children with disabilities shall be disaggregated:
  - for assessments conducted after July 1, 1998; and
  - for assessments conducted before July 1,1998, if the state is required to disaggregate such date prior to July 1, 1998.

Q. How is the determination made of the accommodations needed for each child and whether each child will participate in a particular state- or district-wide assessment or in an alternate assessment?

A. A child's IEP must include a statement of any individual accommodations in the administration of state- or district-wide assessments of student achievement that are needed for the child to participate in the assessment. If the IEP team determines that the child will not participate in a particular assessment or part of an assessment, the IEP must include a statement of why the assessment is not appropriate and how the child will be assessed.

SOURCE: *IDEA 1997: LET'S MAKE IT WORK*, 1998, RESTON, VA: THE COUNCIL FOR EXCEPTIONAL CHILDREN · 59

Resources on Performance Goals, Indicators, and Assessment

Cummins, J. (1984). *Bilingualism and special education: Issues in assessment and pedagogy*. San Diego: College Hill Press.

Davidson, M. R., & Howell, K. W. (1997). State standards: Authenticity vs. diversity. *Diagnostique, 22*(3), 164-181.
This article provides cautions regarding the move to use national standards and their impact on students with disabilities.

Elliott, S. N. (1994). *Creating meaningful performance assessments: Fundamental concepts*. 35pp. #P5059. Reston, VA: The Council for Exceptional Children.
An overview of issues related to performance assessments is presented.

Hamayan, E. V., & Damico, J. S. (Eds.). (1991). *Limiting bias in the assessment of bilingual students*. Austin: Pro-Ed.
Designed to help assessment personnel become aware of and assist in limiting bias in the assessment process for students who are limited English proficient (LEP), non-English proficient (NEP), culturally and linguistically diverse (C/LD) and bilingual.

McLaughlin, M. J., and Warren, S. H. (1994). *Performance assessment and students with disabilities: Usage in outcomes-based accountability systems*. 35pp. #P5061. Reston, VA: The Council for Exceptional Children.
A source of alternatives to traditional assessment.

The National Center on Educational Outcomes (NCEO) provides national leadership in the identification of outcomes and indicators to monitor educational results for all students, including students with disabilities in national and state assessments, standards-setting efforts, and graduation requirements.
The following NCEO materials relate to the new requirements in P.L. 105-17:

Policy Directions 6 (participation in large-scale assessments, including state and district assessments);

Policy Directions 7 (use of accommodations);

Policy Directions 5 (alternate assessments);

Synthesis Report 23 (why it is important to keep track of the participation of students with disabilities in assessments);

Synthesis Report 24 (tough questions and answers about accountability and students with disabilities);

Synthesis Report 25 (considerations in developing inclusive accountability systems).

These reports and other information on publications can be found at the University of Minnesota, 350 Elliott Hall, 75 East River Road, Minneapolis, MN 55455, phone (612) 626-1530 or at their Web site at:

http://www.coled.umm.edu/NCEO

October 15, 1997 letter to Thomas Irvin, Office of Special Education and Rehabilitative Services, U.S. Department of Education from The Council for Exceptional Children related to assessing the performance of students with disabilities. Available on CEC's Web site at:

http://www.cec.sped.org

September 29, 1997 Dear Colleague letter from U.S. Department of Education on state-wide assessment system.

Use this space to add additional resources appropriate for your state and local district.

SECTION

15

Personnel Preparation

Section 612, Subpart 2, Chapter 1, and Section 673

There are a number of provisions in IDEA Amendments of 1997 that relate to the preservice and inservice training of personnel. In order to determine training that may be applicable to your needs and available in your area, you need to know what sorts of training might be available and who to contact for specific information. In order to facilitate your search, this section has been divided based upon the Federal, state, or local agency most likely to have the appropriate information.

Federally Administered Personnel Preparation Activities

The questions in this section relate to programs funded by IDEA and administered by the U.S. Department of Education. Except for the State Program Improvement Grants (described under "State Administered Personnel Preparation Activities," that follows) information relating to any of these programs can best be obtained from the U.S. Department of Education (1-800-USA-LEARN).

Q. What competitively funded programs are available from the U.S. Department of Education that might be utilized for personnel preparation?

A. These programs fall under two categories: State Program Improvement Grants (description following, under "State Administered Personnel Preparation Activities"); and Coordinated Research, Personnel Preparation, Technical Assistance, Support, and Dissemination of Information. (See Section on Part D—National Support Programs.)

Q. What are the overall goals of the Coordinated Research, Personnel Preparation, Technical Assistance, Support, and Dissemination of Information grants, contracts, and cooperative agreements?

A. Activities funded under this program are designed to "address educational, related services, transitional, and early intervention needs identified by SEAs in applications submitted for state program improvement grants."

Q. What activities must be funded by these programs?

A. At least 1% of the total funds must be used to fund either or both:

- Outreach and technical assistance to historically Black colleges and universities (HBCUs) and institutions of higher education with at least 25% minority enrollment; and
- Assistance for HBCUs and institutions of higher education with at least 25% minority enrollment to assist other colleges, universities, institutions, and agencies in "improving educational and transitional services for children with disabilities."

Q. What priorities of these programs relate to personnel preparation?

A. The authorized grants, contracts, and cooperative agreements that may fund personnel preparation share their purpose with two other programs. This purpose is to "provide Federal funding for coordinated research, demonstration projects, outreach, and personnel preparation activities that are linked with, and promote, systematic change; and improve early intervention, educational, and transitional results for children with disabilities." Personnel preparation under this purpose must "help address state-identified needs for qualified personnel in special education, related services, early intervention, and regular education, to work with children with disabilities; and to ensure that those personnel have the skills and knowledge, derived from practices that have been determined, through research and experience, to be successful, that are needed to serve those children."

Q. What specific personnel needs are likely to be addressed under this program?

A. There must be activities funded to address the following personnel needs:

- Individuals appropriately trained to provide services to infants, toddlers, and students with low-incidence disabilities;

- Individuals appropriately trained to provide services to infants, toddlers, and students with high-incidence disabilities; and
- Leadership personnel whose work affects early intervention, educational, and transitional services for children with disabilities.

There must also be funding of activities of "national significance." These activities might include projects with objectives such as improving practices for inservice or preservice training of personnel or demonstrating the application of emerging knowledge to the training of personnel.

State Administered Personnel Preparation Activities

The questions in this section relate to programs funded by IDEA and administered by state departments of education. Some personnel preparation activities are required by every state receiving IDEA funds, while other activities may be supported at the state's discretion.

REQUIRED ACTIVITIES: Even though the following are administered by the states, since they are required of all states choosing to participate in IDEA, the U.S. Department of Education's Office of Special Education Programs may monitor these activities and take corrective action if a state does not comply with the guidelines.

Q. What personnel preparation activities are provided by every state receiving IDEA funds?

A. Each state must develop a Comprehensive System of Personnel Development (CSPD) "designed to ensure an adequate supply of qualified special education, general education, and related services personnel." The CSPD requirements encompass all of the personnel preparation activities authorized under optional State Improvement Plans and under the Infant and Toddler program (Part C), so they are all listed here. For more on State Improvement Plans, see previous section, Federally Administered Personnel Preparation Activities

Q. What components are in a state's Comprehensive System of Personnel Development?

A. Each state, through its plan, must:

- Make efforts to ensure an adequate supply of qualified special education, general education, and related services personnel;
- Recruit, prepare, and retain qualified personnel, including personnel from underrepresented populations;
- Prepare general education and special education personnel, and early intervention paraprofessionals with content knowledge and collaborative skills;
- Enhance the abilities of teachers to address behavior on the part of children with disabilities that impedes the learning of children with disabilities and others;
- Acquire and disseminate "significant knowledge" to teachers, administrators, school board members, and related services personnel;
- Seek to increase the capacities of preservice and inservice training organizations to support programs meeting state and local needs;
- Integrate its personnel preparation activities with other professional development plans and activities;
- Provide for training of "primary referral sources respecting the basic components of early intervention services available in the state";
- Address identified needs for inservice and preservice activities to ensure that professional and paraprofessional personnel who provide special education, general education, related services, or early intervention services, "have the knowledge and skills needed to meet the needs of children with disabilities";
- Endeavor to develop common certification criteria with other states, and to address reciprocity agreements for credentialing with neighboring states;
- Collaborate with other states to develop personnel preparation programs for which the individual states do not have sufficient demand;
- Provide joint training for parents, special education personnel, general educators, and related services personnel;
- Provide for the training of paraprofessionals in the area of early intervention; and
- Develop "policies and procedures relating to the establishment and maintenance of standards" to ensure personnel are adequately prepared to carry out Part C (Infants & Toddlers).

Additional options relating to early intervention include providing:

- Efforts to recruit and retain early education service providers;
- Efforts to prepare fully and appropriately qualified early intervention providers;
- Activities to train early intervention personnel to work in rural or inner city areas; and
- Training for personnel to coordinate transition services for infants and toddlers from an early intervention program to other appropriate services.

Q. What is meant by the phrase "qualified personnel"?

A. Personnel must be "appropriately and adequately prepared" according to state-developed personnel standards.

Q. Are there any guidelines to assist states in developing personnel standards?

A. Yes. The SEA must ensure that standards:

- Are "consistent with any state-approved or state-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline";
- Require states to "take steps to require retraining or hiring of personnel that meet professional standards in the state" if those professional standards "are not based on the highest requirements in the state applicable to a specific profession or discipline"; and
- Allow paraprofessionals and assistants who are appropriately trained and supervised (according to state law, regulation, or policy) to assist in provision of special education and related services.

Q. What if there are not enough qualified personnel?

A. A state may adopt a policy allowing LEAs, in an area of the state where there is a shortage of qualified personnel, to employ "the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary" to meet the state's standards within 3 years.

OPTIONAL ACTIVITIES: Each state may use up to 25% of their Part B grant (with adjustments for inflation) for state-level activities. There are a number of ways states are authorized to use these funds, some of which involve personnel preparation. You will need to check with your state department of education in order to find out if your state is supporting personnel preparation activities under any of these authorities.

Q. What IDEA-funded professional development activities might your state offer?

A. From monies set aside for administration and other state activities in Parts B and C, the state may fund:

- "Support and direct services, including technical assistance and personnel development and training";
- Activities "to assist local education agencies in meeting personnel shortages" and
- Activities to "support implementation of the State Improvement Plan" (see previous section, *Federally Administered Activities*).

Q. Are there competitive grants for which states may apply and which they may use for personnel preparation?

A. Yes. States may apply for Part D funds under the Part D State Program Improvement Grants for Children with Disabilities. The purpose of the grants is to "assist state educational agencies, and their partners in reforming and improving their systems for providing educational, early intervention, and transitional services, including their systems for professional development, technical assistance, and dissemination of knowledge about best practices, to improve results for children with disabilities."

Each state, in their plan submitted for consideration, must describe the strategies the state will use to "address the identified needs for inservice and preservice preparation to ensure that all personnel who work with children with disabilities (including both professional and paraprofessional personnel who provide special education, general education, related services, or early intervention services) have the skills and knowledge necessary to meet the needs of children with disabilities," including a description of how the state will:

- Prepare general and special educators with the necessary content knowledge and collaborative skills, including professionals and paraprofessionals in the area of early intervention;
- Work with entities that prepare preservice and inservice personnel to develop their capacities to support quality programs meeting state and local needs;
- Recruit, prepare, and retain qualified personnel, including personnel from underrepresented populations;
- Enhance the abilities of teachers to address behavior on the part of children with disabilities that impedes the learning of children with disabilities and others;
- Acquire and disseminate "significant knowledge" to teachers, administrators, school board members, and related services personnel;
- Integrate its personnel preparation activities with other professional development plans and activities;
- Endeavor to develop common certification criteria with other states, and to address reciprocity agreements for credentialing with neighboring states;
- Collaborate with other states to develop personnel preparation programs for which the individual states do not have sufficient demand; and
- Provide joint training for parents, special education personnel, general educators, and related services personnel.

Although states must apply for these grants, it appears that Congress intends to fund this program sufficiently for all states (including the District of Columbia, Puerto Rico, and outlying areas) to receive funding if they submit a satisfactory plan.

Locally Administered Personnel Preparation Activities

The questions in this section relate to programs funded by IDEA and administered by LEAs.

Q. Under what circumstances may Part B federal funds be used by LEAs for training?

A. LEAs may use Part B funds for personnel training under three authorities; general Part B funds, coordinated services system funds, or local capacity-building and improvement funds.

General Part B funds. General Part B funds may be used for personnel preparation as long as such training is an excess cost of providing special education and related services to children with disabilities. Within the provisions of this part of IDEA, assistive technology training for a child, their family, educators, and individuals who are substantially involved in the major life functions of the child is explicitly mentioned as allowable.

Coordinated services system. LEAs may use up to 5% of their Part B funds to "develop and implement a coordinated services system designed to improve results for children and families, including children and families with disabilities." Four authorized activities are "interagency personnel development for individuals working in coordinated services."

Local capacity-building and improvement. Under certain conditions, states may offer (from their Part B funds) subgrants to LEAs for local capacity-building. One of the authorized activities is to support state efforts identified in the State Improvement Plan (an optional plan states may develop and submit for consideration of Federal funding). The training activities authorized in state improvement plans are among those listed above under "required activities."

Q. Are all LEAs authorized to carry out these activities?

A. No. LEAs are not eligible to receive any IDEA funds unless they meet certain criteria to the satisfaction of the SEA. Further, in order to qualify for local capacity-building subgrants, LEAs must demonstrate to the state that:

- All personnel are appropriately and adequately trained consistent with state guidelines; and
- The LEA contributes to and uses the state Comprehensive System of Personnel Development.

Q. How may Part C funds be used locally for personnel development?

A. The Infants and Toddlers program is under the supervision of the state, therefore there are no locally administered personnel preparation activities. Such activities are the responsibility of any state receiving Part C funds under their CSPD.

Q. How may Part D funds be used locally for personnel development?

A. Programs funded under Part D, "National Activities to Improve Education of Children with Disabilities" are supervised by the U.S. Department of Education. Although the grants under Subpart 1, State Improvement Grants for Children with Disabilities, are awarded to states, states must establish contractual partnerships with LEAs. Two of the authorized activities relate directly to personnel preparation. See the previous section on State Administered Activities.

Comments from the Senate Committee

Under the current program, universities receive grants based on applications made to the Department of Education. These applications generally focus on preservice training for special education teachers. In many states, the greatest need for training is for inservice training for general and special education teachers, and for preservice training in addressing the special instructional needs of children with disabilities, including their integration in general education classes, for future general education personnel. The Committee believes that, by targeting State Program Improvement Grant funds as it has, appropriate training for teachers addressing the learning needs of children with disabilities, especially general education teachers in early grades, will help reduce inappropriate referrals to special education of children who are learning disabled and improve results for children with disabilities served by both general and special education personnel. Instead of learning from a teacher whose abilities cannot properly meet the child's particular needs, children who are learning disabled will have been taught in a manner that they can understand from teachers whose training permitted them to understand that child's learning style. *Senate Report*, pp. 37-39

Resources on Personnel Preparation

CEC Division for Early Childhood. (1993). *DEC recommended practices: Indicators of quality in programs for infants and young children with special needs and their families.* 136pp. #D417. Available from The Council for Exceptional Children.

Validated practices in the areas of assessment, family participation, IFSPs & IEPs, intervention strategies, transition, personnel competence, evaluation, and specific skills intervention.

The Council for Exceptional Children. (1996). *What every special educator must know: The international standards for the preparation and certification of special education teachers.* 145pp. #R5128R. Reston, VA: The Council for Exceptional Children.

Core standards for knowledge and skills for all beginning special education teachers plus expanded standards in specialty areas are described. CEC believes that all inservice and preservice professional preparation programs should prepare individuals to meet both state and professionally recognized standards for degrees, endorsements, and licensure.

Gallagher, P., Malone, D. M., Cleghorne, M., & Helms, K. A. (1997). Perceived inservice training needs for early intervention personnel. *Exceptional Children, 64,* 19-30.

Competencies needed by early intervention personnel include:

- Typical/atypical development
- Family systems and family involvement
- Assessment
- Program implementation and evaluation
- Administrative and team process
- Professional development
- Technology

Miller, P. S., & Stayton, V. D. (1996). Personnel preparation in early education and intervention: Recommended preservice and inservice practices. In S. L. Odom & M. E. McLean (Eds.). *Early intervention/early childhood special education: Recommended practices* (pp. 329-358). Austin, TX: Pro-Ed.

This article elaborates on specific educational practices in early intervention and early childhood special education recommended by a task force of The Council for Exceptional Children's Division for Early Childhood.

Sexton, D., Snyder, P., Wolfe, B., Lobman, M., Stricklin, S., & Akers, P. (1996). Early intervention inservice training strategies: Perceptions and suggestions from the field. *Exceptional Children, 62,* 485-495.

The most effective training strategies identified include:

- Teacher modeling.
- Small group discussions.
- Practice of targeted skills.

Resources from the National Clearinghouse for Professions in Special Education include:

- State Licensing Agencies
- Career Flyers
- CSPD Coordinators (Part B)
- CSPD Early Childhood Coordinators (Part H)
- State Requirements for Certification

Call 800-641-7824 to request copies.

Use this space to add additional resources appropriate for your state and local district.

SECTION

16

National Support Programs

Part D

The Individuals with Disabilities Education Act Amendments of 1997, P.L. 105-17, replaced the 14 support programs that were under Parts C-G with a new Part D, National Activities to Improve Education of Children with Disabilities. There are five authorized line items under this part: State Program Improvement Grants; Research and Innovation; Personnel Preparation; Coordinated Technical Assistance, Support, and Dissemination of Information; and Technology Development, Demonstration and Utilization, and Media Services.

The new Part D programs, whose precursors were initiated in the Eisenhower years, have provided the critical infrastructure in such areas as: research, professional preparation, technical assistance, technology and support, and dissemination of information that make an effective early intervention and special education program a reality for each child. The problems children, families, and teachers face are increasingly complex. The strategies of yesterday are not adequate to educate children who live and grow in increasingly turbulent times, who survive childhood diseases or accidents that formerly were fatal, or who are born very prematurely. It is essential that the training and research and development functions of IDEA Part D continue to drive improvements in all aspects of practice and keep pace with the changing priorities of IDEA. These programs provide a way to study solutions to many of the problems that have been identified, to ensure their validity before making them widespread practice, and to proactively address emerging issues.

Q. What is the focus of the new State Program Improvement Grants?

A. The purpose of this program is to assist SEAs, and others in their state to reform and improve their systems for providing educational, early intervention, and transitional services, including their systems for professional development, technical assistance, and dissemination of knowledge about best practices to improve results for children with disabilities. SEAs can apply for grants on a competitive basis for a period of at least 1 year and not more than 5. Grants made to the states will not be less than $500,000 and not more than $2,000,000. An SEA funded shall not use less than 75% of the grant funds for any fiscal year to ensure there are sufficient general education, special education, and related services personnel who have the skills and knowledge necessary to meet the needs of children with disabilities and developmental goals of young children; or to work with other states on common certification criteria. If the state demonstrates it has the personnel described above, the state then must use not less than 50% for these purposes.

Q. What is the purpose of the Research and Innovation Program?

A. The purpose of this program is to produce, and advance the use of, knowledge to:

- Improve services to children with disabilities, including the practices of professionals and others involved in providing such services; and educational results to children with disabilities;
- Address the special needs of preschool-aged children and infants and toddlers with disabilities, including infants and toddlers who would be at risk of having substantial developmental delays if early intervention services were not provided to them;
- Address the specific problems of overidentification and underidentification of children with disabilities;
- Develop and implement effective strategies for addressing inappropriate behavior of students with disabilities in schools, including strategies to prevent children with emotional and behavioral problems from developing emotional disturbances that require the provision of special education and related services;
- Improve secondary and postsecondary education and transitional services for children with disabilities; and
- Address the range of special education, related services, and early intervention needs of children with disabilities who need significant levels of support to maximize their participation and learning in school and in the community.

This program contains three separate authorities: New Knowledge Production, Integration of Research and Practice, and Improving the Use of Professional Knowledge.

Q. How does the Part D Support Program address personnel preparation?

A. Part D includes the Personnel Preparation to Improve Services and Results for Children with Disabilities which is designed to: (a) help address state-identified needs for qualified personnel in special education, related services, early intervention, and general education, to work with children with disabilities; and (b) ensure that those personnel have the skills and knowledge, derived from practices that have been determined through research and experience to be successful, that are needed to serve those children. This program contains four authorities: Low-Incidence Disabilities, Leadership Preparation, Projects of National Significance, and High-Incidence Disabilities.

Q. What is the Federal role in technical assistance and sharing of information?

A. National technical assistance, support, and dissemination activities are necessary to ensure that Parts B and C are fully implemented and achieve quality early intervention, educational, and transitional results for children with disabilities and their families. The purpose of this program is to ensure that:

- Children with disabilities and their parents receive training and information on their rights and protections under this Act, in order to develop the skills necessary to effectively participate in planning and decision making relating to early intervention, educational, and transitional services and in systemic-change activities.
- Parents, teachers, administrators, early intervention personnel, related services personnel, and transition personnel receive coordinated and accessible technical assistance and information to assist such persons, through systemic-change activities and other efforts, to improve early intervention, educational, and transitional services and results for children with disabilities and their families.
- On reaching the age of majority under state law, children with disabilities understand their rights and responsibilities under Part B, if the state provides for the transfer of parental rights under Section 615(m) (Transfer of Parental Rights at Age of Majority).

This program contains four authorities: Parent Training and Information (PTI) Centers, Community Parent Resource (CPR) Centers, Technical Assistance for Parent Training and Information Centers, and Coordinated Technical Assistance and Dissemination.

Q. How does IDEA maintain support in the areas of technology and media services?

A. The new Technology Development, Demonstration, and Utilization and Media Services program funds projects under both Technology and Educational Media. These efforts are designed to support activities so that:

- Appropriate technology and media are researched, developed, demonstrated, and made available in timely and accessible formats to parents, teachers, and all types of personnel providing services to children with disabilities; and
- The general welfare of deaf and hard-of-hearing individuals is promoted by:
  - bringing to such individuals an understanding and appreciation of the films and television programs that play an important part in the general and cultural advancement of hearing individuals; and
  - providing, through those films and television programs, enriched educational and cultural experiences through which deaf and hard-of-hearing individuals can better understand the realities of their environment; and
  - providing wholesome and rewarding experiences that individuals who are deaf and hard-of-hearing may share.
- Federal support is designed to:
  - stimulate the development of software, interactive learning tools, and devices;
  - make information available on technology research, technology development, and educational media services and activities;
  - promote the integration of technology into curricula to improve early intervention, educational, and transitional results for children with disabilities;
  - provide incentives for the development of technology and media devices and tools that are not readily found or available because of the small size of potential markets;
  - make resources available to pay for such devices and tools and educational media services and activities;
  - promote the training of personnel to: (a) provide such devices, tools, services, and activities in a competent manner; and (b) to assist children with disabilities and their families in using such devices, tools, services, and activities; and
  - coordinate the provision of such devices, tools, services, and activities (a) among state human services programs; and (b) between such programs and private agencies.

Q. Does the reauthorized IDEA still include the Special Studies Program?

A. This program is now the Studies and Evaluations Program. It is located in Section 674 and is designed to assess progress in the implementation of the IDEA, including the effectiveness of state and local efforts. Three kinds of activities occur under this authority including a national assessment, the Annual Report to Congress, and technical assistance to LEAs to assist them in local capacity-building and improvement projects and other local systemic improvement activities.

Resources for Part D—National Support Programs

CEC Public Policy Unit. (1997). *Federal outlook for exceptional children: Fiscal year 1998, budget considerations and CEC recommendations.* 86 pp. #R5218. Reston, VA: The Council for Exceptional Children.

This document provides comparison data on appropriations for all major programs affecting special education; and a summary of each program including purpose, who receives funding, types of activities supported, recent funding history, and fiscal considerations.

Use this space to add additional resources appropriate for your state and local district.

Summary of the Individuals with Disabilities Education Act (IDEA) Amendments of 1997 (P.L. 105-17)

I. Part A: General Provisions

Structure of the Programs. The new legislation restructures IDEA into four parts: Part A, General Provisions; Part B, Assistance for Education of All Children with Disabilities; Part C, Infants and Toddlers with Disabilities; and Part D, National Activities to Improve Education of Children with Disabilities.

Definitions. The legislation makes a few important changes to definitions:

- **Developmental Delay.** The definition of "child with a disability" for a child ages 3 through 9 may, at the discretion of the states and LEAs, be a child who is experiencing developmental delays and who needs special education and related services.
- **Serious Emotional Disturbance.** In the definitions section, the legislation keeps the reference to "serious emotional disturbance" but then adds "hereinafter referred to as emotional disturbance."
- **Related Services.** The new legislation would add "orientation and mobility services" to the definition of related services.
- **Supplemental Aids and Supports.** A definition of supplemental aids and supports is added and includes aids, services, and other supports that are provided in general education classes or other education-related settings to enable children with disabilities to be educated with children without disabilities to the maximum extent appropriate.
- **Transition Services.** Related services are added to list of services included under the definition of transition services.

Office of Special Education Programs. Language establishing the grade of the Deputy Assistant Secretary of the Office of Special Education Programs and requiring the office to have not less than six positions to assist the Deputy Assistant Secretary is deleted.

Policy Letters and Regulations. Language is added that prohibits the Secretary from establishing a rule that is required for compliance and eligibility, through policy letters or other statements. The Secretary must publish quarterly, in the Federal Register, a list of correspondence from the Department of Education that describes the interpretations of the Department of Education. For issues of national significance, the Secretary must widely disseminate the response to SEAs, LEAs, parent and advocacy organizations, and other interested organizations, and not later than 1 year after, issue written guidance on the policy, question, or interpretation.

II. Part B: Assistance for Education of All Children with Disabilities

Federal Commitment. The legislation replaces language that entitles states to funds equal to the number of children with disabilities receiving special education multiplied by 40% of the average per pupil expenditure (APPE) for every child aged 3 through 21 served under IDEA, with an authorization that allows the Secretary of Education and Secretary of the Interior to provide grants and to use the most recent population data to do so.

State Formula. The current child-count formula is retained until Federal appropriation reaches approximately $4.9 billion. Once the trigger has been reached, a new formula based on the population of children aged 3 through 21 (85%) and the number of children aged 3 through 21 in poverty (15%) applies to new monies in excess of the appropriation for the prior fiscal year. The legislation provides a "hold harmless" or "floor" for each state's allocation. Under the new formula, no state would receive less than the amount it received in the year before the new formula takes effect.

State Administration. For state administration and state-level activities, the legislation is changed to allow states to retain an amount equal to 25% of the amount the state received for fiscal year 1997 plus future increases at the lesser of the rate of inflation or Federal appropriations increases. No more than 20% of this amount can be used for administrative purposes.

- **LEA Capacity Building and Improvement.** Any state funds in excess of inflation in any year are to be used for subgrants to LEAs for systemic change, including: (a) direct services for children who have been expelled and services for children in correctional facilities, children enrolled in state-operated or supported schools, and children in charter schools; (b) addressing needs or carrying out improvement strategies under the state's improvement plan; (c) adopting promising practices, materials, and technology; (d) establishing, expanding, or implementing interagency agreements and arrangements; and (e) increasing cooperative

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problem-solving between parents and school personnel and promoting the use of alternative dispute resolution.

State-Level Activities. State-level activities funds can be used: (a) for support and direct services, including technical assistance and personnel development and training; (b) for administrative costs of monitoring and complaint investigation, but only to the extent that those costs exceed the costs incurred for those activities during fiscal year 1985; (c) to establish and implement the mediation process; (d) to assist LEAs in meeting personnel shortages; (e) to develop a state improvement plan; (f) for activities to meet the performance goals and to support the implementation of the state improvement plan; (g) to supplement other amounts used to develop and implement a state-wide coordinated services system, but not to exceed 1% of the amount received by the state; and (h) for subgrants to LEAs for capacity building and improvement.

State Grants to Localities. Under the new legislation, state grants to localities will follow the same within-state formula as the state formula once the Federal appropriation reaches approximately $4.9 billion. There are no maximum or minimum grant levels set for local grants.

Preschool Formula. If the Federal appropriations for preschool grants is equal to or greater than the amount allocated to states for the preceding fiscal year, each state will receive the amount it received for fiscal year 1997 and any remaining funds will be distributed based on the population of children aged 3 through 5 (85%) and population of children aged 3 through 5 living in poverty (15%). No state's allocation shall be less than its allocation for the preceding year.

Preschool Subgrants to Localities. The new legislation will require states to award each locality the 75% of the amount the agency would have received for fiscal year 1997 and additional funds based on the number of children enrolled in public and private elementary and secondary schools (85%) and the number of children living in poverty (15%).

Previous State Plans. Under the new legislation, state applications need to be submitted only once and thereafter only amendments necessitated by official findings of compliance problems or changes in law.

Child Eligibility. Along with definition changes affecting students with developmental delays, the legislation allows the governor of the state, consistent with state law to assign to any public agency in the state the responsibility of ensuring that services are provided to children with disabilities who are convicted as adults under state law and incarcerated in adult prisons. Further provisions state that the obligation to make FAPE available to all children with disabilities does not apply with respect to children (a) aged 3 through 5 and 18 through 21 in a state in which it would be inconsistent with state law or practice; and (b) aged 18 through 21 to the extent that state law does not require that special education and related services be provided to children with disabilities who were not receiving services under this part immediately prior to their incarceration in adult prisons.

Additional language states that a child shall not be determined to have a disability if the determinant factor for the determination is lack of instruction in reading or math or limited English proficiency.

Child Find. The legislation clarifies that states are required to identify, locate, and evaluate all children with disabilities residing in the state, including children with disabilities attending private schools. The legislation also states that nothing in the Act requires children be classified by their disability so long as they have a listed disability.

Least Restrictive Environment (LRE). Language is added that requires that if the state uses a funding mechanism that distributes funds on the basis of the type of setting in which a child is served, the funding mechanism does not result in placements that violate the requirements of LRE. If the state does not have policies and procedures to ensure compliance, the state is required to provide the Secretary with an assurance that it will revise the funding mechanism.

Transition from Infant and Toddler Program to Preschool Program. Language is added that requires the LEA to participate in transition planning conferences arranged by the designated lead agency.

Services for Children in Private Schools. The legislation requires that, consistent with the number and location of children with disabilities whose parents have enrolled them in private schools, provision is made for the participation of those children by providing special education and related services as follows: Amounts expended or the provision of these services by an LEA must be equal to a proportionate amount of available federal funds. The services may be provided on the premises of private schools, including parochial schools to the extent consistent with law.

Public Reimbursement of Private Placement. The legislation clarifies that LEAs are not required to pay for the cost of education, including special education and related services, of a child with a disability at a private school if the LEA made a FAPE available to the child and the parents elected to place the child in a private school. If the parents of a child with a disability, who previously received special education and related service under a public agency, enroll the child in a private school without the consent or referral of the public agency, a court or hearing officer may require the

agency to reimburse the parents for the cost of enrollment if it is found that the agency did not make a FAPE available to the child in a timely manner prior to that enrollment.

Limitations on Reimbursement. The cost of reimbursement may be reduced if: (a) the parents did not inform the IEP team at the most recent IEP meeting, that they were rejecting the placement proposed by the public agency, including stating their concerns and their intent to enroll their child in a private school at public expense; or (b) 10 business days prior to the removal of the child from the public school, the parents did not give written notice to the public agency. Reimbursement may also be reduced if, prior to the parents' removal of the child from the public school, the public agency informed the parents of its intent to evaluate the child, but the parents did not make the child available for the evaluation, or upon a judicial finding of unreasonableness with respect to actions of the parents.

The reimbursement cannot be reduced or denied for failure to provide notice if: (a) the parent is illiterate and cannot write in English; (b) compliance would likely result in physical or serious emotional harm to the child; (c) the school prevented the parent from providing such notice; or (d) the parents had not received notice of the notice requirement.

Interagency Agreement. The legislation strengthens language for requiring interagency coordination. The governor or designee is required to ensure that an interagency agreement is in effect between the state education department and public agencies that are assigned responsibility to provide or pay for any services that are also considered special education or related service, including assistive technology devices, supplementary aids and services, and transition services. The agreement must identify the financial responsibility of each agency, including the state Medicaid agency and other public insurers of children with disabilities whose financial responsibility will precede the financial responsibility of the LEA.

Comprehensive System of Personnel Development (CSPD). The legislation replaces the current requirements of the CSPD and requires the state to have in effect a CSPD that is designed to ensure an adequate supply of qualified special education, general education, and related services personnel that meets the requirements of the state improvement plan relating to personnel development.

Personnel Standards. Language governing personnel standards is changed to require the SEA to establish and maintain standards to ensure personnel are appropriately and adequately prepared and trained. As in current law, the standard must be consistent with any state-approved or recognized standards and to the extent the standards are not based on the highest requirements, the state must take steps to require retraining or hiring of personnel that meet appropriate professional requirements. Language is added that allows paraprofessionals and assistants who are appropriately trained and supervised, in accordance with state law, regulations, or written policy, to be used to assist in the provision of special education and related services. Also added is a provision that allows a state to adopt a policy that includes a requirement that LEAs make an ongoing good-faith effort to recruit and hire appropriately and adequately trained personnel, including in a geographic area where there is a shortage of such personnel, the most qualified individuals available who are making progress toward completing applicable course work necessary to meet the standards within 3 years.

Performance Goals and Indicators. The legislation adds language that requires a state to establish goals for the performance of children with disabilities and develop indicators to judge children's progress.

Participation in Assessments. The legislation requires children with disabilities to be included in general state- and district-wide assessment programs, with appropriate accommodations where necessary, by July 1, 1998. A state or LEA must develop guidelines for the participation of children with disabilities in alternative assessments for those children with disabilities who cannot participate in state- and district-wide assessment programs and must develop and conduct those alternate assessments not later than July 1, 2000.

State Supplantation of Funds. As in current law, funds to a state cannot be commingled and cannot supplant the level of Federal, state, or local funds unless the state provides evidence that all children with disabilities have a FAPE available. However, a new provision allows states to apply for waivers to the maintenance of effort provisions for exceptional or uncontrollable circumstances, including a natural disaster or a precipitous and unforeseen decline in the financial resources of the state.

State Advisory Panel. Additional members required to be on the State Advisory Panels are listed, including: representatives of other state agencies involved in the financing or delivery of related services to children with disabilities; representatives of private schools and public charter schools; at least one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities; and representatives from the state juvenile and adult corrections agencies. A majority of the members of the panel are required to be individuals with disabilities or parents of children with disabilities.

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Collection of Data on Suspension and Expulsion Rates. States are required to examine data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities among LEAs or compared to rates for children without disabilities. If discrepancies are occurring, the SEA must review and if appropriate, revise policies, procedures, and practices related to the development implementation of IEPs, the use of behavioral interventions, and procedural safeguards.

Local Supplantation of Funds. New provisions allow an LEA to reduce the level of expenditures on the education of children with disabilities when the reduction in funds is attributable to: (a) the voluntary departure of special education personnel; (b) a decrease in the enrollment of children with disabilities; and (c) the termination of the obligation of the agency to provide a program of special education to a particular child with a disability that is an exceptionally costly program of special education because the child has left the jurisdiction of the agency, has reached that age at which the obligation of the agency is terminated, or no longer needs such program of special education; or (d) the termination of costly expenditures for long-term purchases.

In addition, a new exception to the maintenance of effort requirements is added in instances where an LEA has received more Federal funds from one year to the next, and the Federal appropriation exceeds $4.1 billion. In these circumstances, the LEA may use up to 20% of the increase in Federal funds to reduce its effort of the previous year by that amount. States, however, may prevent their LEAs from reducing their effort in cases where the LEA has been cited as failing to substantially comply with the Act.

School-Wide Programs. A new provision allows an LEA to use funds to carry out a schoolwide program, except that the amount used is limited to the number of children with disabilities in the school multiplied by the per child amount.

Services and Aids That Also Benefit Children Without Disabilities. The legislation allows an LEA to use funds for the cost of special education and related services and supplementary aids and services provided in a general education class or other education-related setting to a child with a disability in accordance with the IEP of the child, even if one or more children without disabilities benefits from the services.

Integrated and Coordinated Services System. LEAs are also allowed to use not more than 5% of their funds, in combinations with other amounts other than education funds, to develop and implement a coordinated services system. Funds can be spent for: (a) improving the effectiveness and efficiency of service delivery; (b) service coordination and case management that facilitates the linkage of IEPs and IFSPs under multiple Federal and state programs; (c) developing and implementing interagency financing strategies for the provision of education, health, mental health, and social services, including transition services and related services; and (d) interagency personnel development for individuals working on coordinated services. An LEA can also use funds for a coordinated services project it is carrying out under Title XI of the Elementary and Secondary Education Act of 1965.

Charter Schools. Provisions are added that require LEAs to serve children with disabilities in charter schools and to provide funds to charter schools in the same manner as it provides funds to other schools.

Prior Local Plans. LEAs are not required to submit a new application if LEAs already have a prior local plan on file with the SEA. SEAs may require an LEA to modify its application if there are amendments to the Act or a new interpretation by Federal or state courts, or there is an official finding of noncompliance with Federal or state law or regulations.

Joint Establishment of Eligibility. The new legislation allows the SEA to require an LEA to establish its eligibility jointly with another LEA if the SEA determines that the LEA would not be able to establish and maintain a program of sufficient size and scope and drops the $7,500 minimum local grant requirement.

School-Based Improvement Plan. An SEA is allowed to grant authority to an LEA to select public schools to design, implement, and evaluate a school-based improvement plan for a period not to exceed 3 years. The plan must (a) be designed to improve educational and transitional results for all children with disabilities and, as appropriate, for other children who attend the school; (b) be designed, evaluated, and as appropriate, implemented by a school-based standing panel (the panel must include parents of children with disabilities, special and general education teachers, special and general education administrators, or designees; and related services providers); (c) include goals and measurable indicators to assess the progress of the public school in meeting the goals; and (d) ensure that all children with disabilities receive the services described in their IEPs. The plan may be submitted to the LEA for approval only if a consensus with respect to any matter relating to design, implementation, or evaluation of the goals of such plan is reached by the panel.

Disciplinary Information. The legislation adds provisions that allow states to require an LEA to include in the records of a child with a disability, a statement of any current or previous disciplinary action that has been taken against the child, and transmit the statement to the same extent that the disciplinary information is included in and transmitted with the student records of

children without disabilities. If the state adopts such a policy, and the child transfers from one school to another, the transmission of any child's records must include both the child's current IEP and any statement of current or previous disciplinary action that has been taken against the child.

Student Evaluations. The legislation requires the LEA to (a) use a variety of assessment tools and strategies to gather relevant functional and developmental information, including information provided by the parent, that may assist in determining whether the child has a disability and the content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum or, for preschool children, to participate in appropriate activities; (b) not use any single procedure for determining whether the child has a disability or determining an appropriate educational program; and (c) use technically sound instruments that may assess cognitive and behavioral factors, in addition to physical or developmental factors. The LEA must also assess the child in all areas of suspected disability and provide assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs.

- **Requirements of Evaluation Tests.** LEAs must also ensure that tests are selected and administered so as not to be discriminatory and are provided and administered in the child's native language or other mode of communication, unless it is not feasible and that the tests have been validated, are administered by trained personnel, and are administered in accordance with any instructions provided by the producer of the test.

Student Reevaluations. For a reevaluation, the legislation requires the IEP team and other qualified professionals to review existing evaluation data and on the basis of that review and input from the child's parents, identify: (a) what additional data is needed to determine whether the child has or continues to have a particular category of disability; (b) the present levels of performance and educational needs of the child; (c) whether the child needs or continues to need special education and related services; and (d) whether any additions or modifications to special education and related services are needed to meet performance goals and to participate, as appropriate, in the general education curriculum.

If additional data are not needed, the LEA must notify the parents of: (a) that determination and the reasons for it, and (b) the right of parents to request an assessment to determine if the child still has a disability.

Individualized Education Programs (IEPs). The legislation adds new IEP requirements and expands already existing requirements. The IEP is required to include:

- A statement of the child's present levels of educational performance, including how the child's disability affects the child's involvement and progress in the general education curriculum; for preschool children as appropriate, how the disability affects the child's participation in appropriate activities;
- A statement of measurable annual goals, including benchmarks or short-term objectives related to (a) meeting the child's needs that result from the child's disability, to enable the child to be involved in and progress in the general education curriculum; and (b) meeting each of the child's other educational needs that result from the child's disability;
- A statement of the special education and related services, and supplementary aids and services to be provided to the child, or on behalf of the child, and any program modifications or support for school personnel necessary for the child to advance toward attaining the annual goals; and to be involved and progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities, and to be educated and participate with other children with and without disabilities in activities;
- An explanation of the extent, if any, to which the child will not participate with children without disabilities in the general education class and in activities;
- A statement of any individual modifications in the administration of state- or district-wide assessments of student achievement that are needed in order for the child to participate in the assessment; and if the IEP team determines that the child will not participate in the assessment a statement of why that assessment is not appropriate and how the child will be assessed;
- The projected date for the beginning of the services and modifications, and the anticipated frequency, location, and duration;
- A statement of transition service needs of the child under components of the IEP that focus on the child's courses of study (beginning at age 14, and updated annually); a statement of needed transition services for the child, including a statement of the interagency responsibilities or needed linkages (beginning at age 16 or younger); and a statement that the child has been informed of his rights that will transfer to the child on reaching the age of majority (beginning at least one year before the child reaching the age of majority); and
- A statement of how the child's progress toward the annual goals will be measured, and how the child's parents will be regularly informed at least as often as parents of children without disabilities are informed,

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and the extent to which the progress is sufficient to enable the child to achieve the goals by the end of the year.

IEP Team. The legislation expands the number of members required to be on an IEP team by requiring both the special education teacher and, where appropriate, the general education teacher; an individual who can interpret the instructional implications of evaluation results (who may already be on the team in a different capacity); and at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel. Additional language requires the representative of the LEA to be qualified to provide, or supervise the provision of specially designed instruction to meet the needs of children with disabilities, knowledgeable about the general education curriculum, and knowledgeable about the availability of LEA resources.

Development of the IEP. A new section details what the IEP team should consider in developing each child's IEP. Issues to be considered include: (a) the strengths of the child and the concerns of the parents for enhancing the education of their child and the results of the initial evaluation or most recent evaluation of the child; (b) in the case of a child whose behavior impeded his learning or that of others, the strategies, including positive behavioral intervention, and supports needed to address that behavior; (c) in the case of a child with limited English proficiency, the language needs of the child as they relate to the IEP; (d) in the case of a child who is blind or visually impaired, provision of instruction in Braille and the use of Braille unless the IEP team determines that instruction in Braille or the use of Braille is not appropriate for the child; (e) the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the children's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and (f) whether the child requires assistive technology devices and services.

General Education Teacher's Participation in IEP Development. Provisions require the general education teacher of the child, to the extent appropriate, to participate in the development of the IEP of the child and in the review and revision of the IEP.

Parents' Participation in Placement. A new provision clarifies that each LEA or SEA shall ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

State Procedural Safeguards Requirements. The legislation adds procedures that SEAs, state agencies, or LEAs must establish and maintain, including procedures related to mediation; procedures that require parents to provide notice, including the name and residence of the child, a description of the nature of the problem of the child, and a proposed resolution of the problem; and procedures that require the SEA to develop a model form to assist parents in filing a complaint.

Parental Notice. In order to cut down on the repetitive information that is sent to parents, the legislation divides information sent to parents into two notices: the prior written notice and the procedural safeguards notice. Agencies must provide prior written notice information to the parents of a child whenever there is a proposal to initiate or change, or refusal to initiate or change the identification, evaluation, or educational placement of the child or the provision of a FAPE. The requirements of the information to be included in prior written notice includes: (a) a description of the action proposed or refused by the agency, and explanation of why the action was proposed or refused; (b) a description of other options that were considered and why those were rejected; (c) a description of each educational procedure, record, or report relevant to the agency's action; (d) a description of other relevant factors; (e) a statement that the parents have protection under the procedural safeguards and, if the notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and (f) a list of sources for parents to contact to obtain assistance in understanding these provisions.

Procedural Safeguards Notice. A notice that includes information on procedural safeguards will be made available to the parents of a child with a disability, at a minimum upon initial referral for evaluation, upon each notification of an IEP meeting, upon reevaluation of the child, and upon registration of a complaint. This notice must include information relating to: independent educational evaluation, prior written notice, parental consent, access to educational records, opportunity to present complaints, the child's placement during pendency of due process proceedings, procedures for students who are subject to placement in an interim alternative educational setting, requirements for unilateral placement by parents of children in private schools at public expense, mediation, due process hearings, state-level appeals, civil action, and attorney's fees.

Mediation. A new section on mediation is included in the legislation that requires SEAs and LEAs to ensure that procedures are established and implemented to allow parties to disputes to resolve disputes through a mediation process. The mediation process must be vol-

untary on the part of the parties, not used to deny or delay a parent's right to a due process hearing or to deny any other rights; and conducted by a qualified and impartial mediator trained in effective mediation techniques. An LEA or SEA may establish procedures to require parents who choose not to use the mediation process to meet with a disinterested party who is under contract with a parent training and information center or community parent resource center or an appropriate alternative dispute resolution entity. The state must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services. The state must also bear the cost of the mediation process. An agreement to the dispute in the mediation process must be set forth in a written mediation agreement. Provisions are also added to ensure that discussions that occur during the mediation must be confidential and not used as evidence in due process hearings or civil proceedings, and the parties may be require to sign a confidentiality pledge.

Requirement for Evaluation Information Prior to Due Process Hearings. The legislation requires that at least 5 business days prior to a hearing, each party must disclose to all other parties all evaluations completed by that date, and recommendations based on the offering party's evaluations that are intended to be used at the hearing.

Attorneys' Fees. A provision is added that prohibits attorneys' fees relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action, or, at the discretion of the state, for a mediation that is conducted prior to the filing of a complaint. An additional new provision allows attorneys' fees to be reduced if the attorney representing the parent did not provide required information to the school district.

Discipline of Children with Disabilities. The legislation adds substantial provisions that address the discipline of children with disabilities. Provisions allow school personnel to order a change in the placement of a child with a disability to an appropriate IAES, another setting, or suspension, for not more than 10 school days (to the extent such alternative would be applied to children without disabilities).

- **Weapons and Drugs.** A child that carries a weapon to school or to a school function, or who possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance while at school or a school function can be placed in an IAES for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days.
- **Behavior Intervention Plan.** The legislation requires that either before or not later than 10 days after taking the disciplinary action, the LEA convene an IEP meeting to develop an assessment plan to address the problem behavior (if the LEA did not conduct a functional behavior assessment and implement a behavior intervention plan for the child before the problem behavior), or if the child already has a behavior intervention plan, the IEP team will review the plan and modify it, as necessary, to address the behavior.
- **Injury to Self or Others.** A hearing officer may order a change in placement of a child with a disability to an IAES for not more than 45 days if the officer determines that the public agency has demonstrated by substantial evidence that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, considers the appropriateness of the current placement, considers whether the agency has made reasonable efforts to minimize the risk of harm in the current placement (including the use of supplementary aids and services), and determines that the IAES meets the requirements.
- **Interim Alternative Educational Setting (IAES).** The legislation requires the IAES to be determined by the IEP team and to be selected so as to enable the child to continue to participate in the general education curriculum, continue to receive services and modifications that will enable the child to meet the goals in the IEP, and include services and modifications designed to address the problem behavior.
- **Manifestation Determination Review.** If a disciplinary action is contemplated as a result of drugs, alcohol, or injury to self or others, or if a disciplinary action involving a change of placement for more than 10 days is contemplated for a child with a disability who had engaged in other behavior that violated any rule or code of conduct: (a) parents must be notified of the decision and of all procedural safeguards not later than the date on which the decision to take action is made; and (b) a review must be conducted of the relationship between the child's disability and the behavior subject to the disciplinary action immediately, if possible, but in no case not later than 10 school days after the date on which the decision to take that action is made. The review is to be conducted by the IEP team and other qualified personnel.
- **Requirements for Finding That Behavior Is not a Manifestation of the Disability.** In order to find that the behavior was not a manifestation of the disability, the team must determine: (a) that the child's IEP and placement were appropriate and that special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the IEP and placement; (b) the child's disability did not impair the ability of the child to understand the impact and consequences of the behav-

ior; and (c) the child's disability did not impair the ability of the child to control the behavior.

- **Implications of Manifestation Review.** If it is determined that the behavior of the child with a disability was not a manifestation of the child's disability, the relevant disciplinary procedure applicable to children without disabilities may be applied to the child in the same manner in which that would be applied to children without disabilities, except that they will continue to receive a FAPE.
- **Parent Appeal and Child Placement During Appeal.** New provisions allow parents who disagree with a determination that the child's behavior was not a manifestation of the disability to request a hearing, and for the SEA or LEA to arrange for an expedited hearing. During the appeal, the child shall remain in the IAES pending the decision of the hearing officer or until the expiration of the time limit, whichever occurs first, unless the parent and the SEA or LEA agree otherwise. If a child is placed in an IAES and school personnel propose to change the child's placement after expiration of the IAES, the child shall remain in the current placement (prior to the IAES) during the pendency of any proceeding to challenge the proposed change in placement, unless school personnel maintain that it is dangerous for the child to be in the current placement, in which case the LEA may request an expedited hearing.
- **Children Not Yet Eligible for Special Education.** A child who has not been determined to be eligible for special education and related services and who has engaged in behavior that violated any rule or code of conduct of the LEA, may assert any of the protections if the LEA had knowledge that the child had a disability before the behavior occurred. If the LEA did not have knowledge that the child had a disability, the child may be subjected to the same disciplinary measures as applied to children without disabilities. The LEA will be considered to have knowledge of the disability if: (a) the parent has expressed concern in writing (unless the parent is illiterate or has a disability that prevents compliance) to personnel of the appropriate educational agency that the child is in need of special education and related services; (b) the behavior or performance of the child demonstrates the need for such services; (c) the parent has requested an evaluation of the child; or (d) the teacher, or other personnel of the LEA has expressed concern about the behavior or performance of the child to the director of special education or to other personnel of the agency.

  If a request is made for an evaluation of a child during the time in which the child is subjected to disciplinary measures, the evaluation shall be conducted in an expedited manner. If the child is determined to have a disability, the agency shall provide special education and related services.

Referral to and Action by Law Enforcement. The legislation clarifies that nothing prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to crimes committed by a child with a disability. An agency that reports a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the authorities.

Transfer of Parental Rights at Age of Majority. The legislation adds language that allows a state to require that, when a child with a disability reaches the age of majority, the public agency provide a notice to both the individual and parents, transfer all rights accorded to parents to the child, notify the individual and parents of the transfer of rights, and transfer all rights accorded to parents to children who are incarcerated in an adult or juvenile correctional institution. For children who have reached the age of majority who have not been determined to be incompetent, but who are determined not to have the ability to provide informed consent with respect to the educational program of the child, the state will establish procedures for the appointment of the parent of the child, or if not available, of another appropriate individual to represent the educational interest of the child.

Withholding Funds from States. The legislation adds language that allows the Federal government to withhold part of a state's payment as well as all funds if there is a failure to comply with requirements.

Program Information. Additional provisions are added requiring states to provide information on the number of children with disabilities from birth through age 2, who stopped receiving early intervention services; the number of children who are removed to an IAES and the acts or items precipitating those removals; the number of children subject to long-term suspensions or expulsions; and the number of infants and toddlers at risk of having substantial developmental delays who are receiving early intervention services.

Removal of Evaluation Provisions from Part B. Authority for the Secretary to make grants for program evaluation is repealed. The program evaluation provisions in Part B of the current law are changed and moved to Part D: National Activities to Improve Education of Children with Disabilities.

Race Disproportionality. New provisions require that data be examined by the state to determine if significant disproportionality of race is occurring in a state in relation to the identification of children as having disabilities and the children's placement. In the case of a

determination of significant disproportionality, the state must provide for the review and, if appropriate, revision of policies and practices.

Preschool Program. The new legislation replaces language authorizing a maximum of $1,500 for each eligible child with a flat authorization of $500 million for fiscal year 1998 and such sums as necessary for each subsequent fiscal year. As noted before, the preschool formula is also changed. For state administration and state-level activities, the legislation is changed to allow states to retain an amount equal to 25% of the amount the state received for fiscal year 1997 plus future increases at the lesser of the rate of inflation or Federal appropriations increases.

State Preschool Activities. State preschool activities may include among other things: support services which may benefit children with disabilities younger than age 3 or older than age 5 as long as those services also benefit children with disabilities aged 3 through 5; direct services; development of a state improvement plan; activities to meet the performance goals and to support implementation of the state improvement plan; supplements to other funds used to develop and implement a state-wide coordinated services system (not to exceed 1% of the amount received by the state under this section for a fiscal year).

III. Part C: Infants and Toddlers with Disabilities

Infants and Toddlers at Risk for Developmental Delay. The policy section of the infants and toddlers program is expanded to encourage states to expand opportunities for children under 3 years of age who would be at risk of having substantial developmental delays if they did not receive early intervention services. Additional changes in the state application provisions require a state to provide a description of the uses of services to at-risk infants and toddlers if the state provides such services.

The requirements governing the use of funds are also modified to allow any state that does not provide services for at-risk infants and toddlers, to strengthen the state-wide system by initiating, expanding, or improving collaborative efforts related to at-risk infants and toddlers, including establishing linkages with appropriate community-based organizations, services, and personnel for identifying and evaluating at-risk infants and toddlers, making referrals, and conducting periodic follow-up on each referral.

State Eligibility. The state eligibility section is changed to permit states to be eligible for a grant if they have adopted a policy that demonstrates appropriate early intervention services are available to all infants and toddlers with disabilities in the state and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation located in the state, and have in effect a state-wide system.

Requirements of a State-Wide System. Changes are made that allow states to include the training of personnel to work in inner-city areas (CSPD), and to establish policies and procedures to ensure that to the maximum extent appropriate, early intervention services are provided in natural environments and that services that are provided in a setting other than a natural environment occur only when early intervention cannot be achieved satisfactorily in a natural environment.

Personnel Recruitment and Hiring. The legislation allows a state to adopt a policy that includes making ongoing good-faith efforts to recruit and hire appropriately and adequately trained personnel to provide services to infants and toddlers with disabilities, including, in a geographic area of the state where there is a shortage of personnel, the most qualified individuals available who are making progress toward completing applicable course work necessary within 3 years, to meet the state's standards.

Individualized Family Service Plan (IFSP). A change in the requirements on the content of the IFSP requires a justification of the extent, if any, to which early intervention services will not be provided in a natural environment.

Transition from Early Intervention Services to Preschool Services. The legislation makes changes in the state application provisions to allow a conference to be convened among the lead agency, the family, and the LEA up to 6 months (at the discretion of all parties) before the child is eligible for preschool services; and in the case of a child who may not be eligible for preschool services, allows the lead agency to make reasonable efforts to convene a conference to discuss the appropriate services that the child may receive.

Previous State Application. A new provision is added that allows states to be eligible if they already have a state application on file. The Secretary may require a state to modify its application if there is an amendment to the Act, a new interpretation, or an official finding of noncompliance.

Mediation. The procedural safeguards required to be included in a state-wide system are expanded to include the right of parents to use mediation.

State Interagency Coordinating Council (SICC). The legislation makes changes to the requirements governing the SICC. There is no longer a minimum and maximum number of people allowed to be on the committee or a requirement that the parents on the committee include minority parents. A representative from a Head Start agency or program in the state and a representative from a state agency responsible for

child care now must also be on the council. The SICC is also authorized to advise appropriate agencies in the state with respect to the integration of services for infants and toddlers and at-risk infants and toddlers and their families, regardless of whether at-risk infants and toddlers are eligible for early intervention services in the state.

State Formula. A special rule is added for 1998 and 1999 that requires no state to receive an amount that is less than the sum of the amounts the state received for fiscal year 1994 under Part H and Subpart 2 of Part D of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965 (state-operated programs). An exception is made if the number of infants and toddlers in the state is less than the number of infants and toddlers determined for fiscal year 1994, in which case the amount will be reduced by the same percentage by which the number of infants and toddlers declined.

If the funds appropriated are insufficient to pay the full amount that all states are eligible to receive, the Secretary will ratably reduce the allocations. If there are additional funds, the Secretary will increase funds on the same basis they were reduced.

Federal Interagency Coordinating Council (FICC). The membership of the FICC is expanded to include a representative of the Office of Educational Research and Improvement and a representative of the Head Start Bureau of the Administration for Children and Families. A provision requiring three parents is changed to eliminate the number specification but requires that parents constitute 20% of the Council. The activities of the Council are expanded to allow the Council to advise and assist not only the Secretary of Education but also the Secretaries of Health and Human Services, Defense, Interior, and Agriculture, and the Commissioner of Social Security.

Authorization of Appropriations. The program is now authorized $400 million for fiscal year 1998 and such sums as necessary for each of the fiscal years 1999 through 2002.

IV. Part D: National Activities to Improve Education of Children with Disabilities

Consolidation of Discretionary Programs Into the New Part D. The legislation consolidates and changes authorities previously under the Parts C through G into a New Part D. There are no authorization levels included under Part D. All programs are to be authorized "at such sums as necessary." Part D has two subparts: Subpart 1: State Program Improvement Grants for Children with Disabilities and Subpart 2: Coordinated Research, Personnel Preparation, Technical Assistance, Support, and Dissemination of Information. Subpart 2 includes two chapters: Chapter 1: Improving Early Intervention, Educational, and Transitional Services and Results for Children with Disabilities Through Coordinated Research and Personnel Preparation; and Chapter 2: Improving Early Intervention, Educational, and Transitional Services and Results for Children with Disabilities Through Coordinated Technical Assistance, Support, and Dissemination of Information.

Subpart 1: State Program Improvement Grants for Children with Disabilities

State Program Improvement Grants. A new competitive grant program authorizes the Secretary to make grants of not less than $500,000 or more than $2 million to SEAs for not less than a year and not more than 5 years to reform and improve their systems for providing educational, early intervention, and transitional services, including their systems for professional development, technical assistance, and dissemination of knowledge about best practices.

State Partnership for Improvement Grants. In order to be eligible, an SEA must establish a partnership with LEAs and other state agencies involved in or concerned with the education of children with disabilities. Partners must include the governor, parents of children with and without disabilities, individuals with disabilities, organizations representing individuals with disabilities and their parents (such as parent training and information centers), community-based and other nonprofit organizations involved in the education and employment of individuals with disabilities, the lead state agency for Part C, general and special education teachers, the state advisory panel, the SICC, and institutions of higher education within the state. A partnership may also include individuals knowledgeable about vocational education, the state agency for higher education, the state vocational rehabilitation agency, public agencies with jurisdiction in the areas of health, mental health, social service, and juvenile justice, and other individuals.

Requirements for Analyses of State Information. To receive a grant, the SEA's application must include a plan that includes an analysis of:

- All information reasonably available on the performance of children with disabilities;
- State and local needs for professional development for personnel to serve children with disabilities;
- Major findings of the most recent reviews of state compliance as they related to improving results; and
- Other information on the effectiveness of the state's systems of early intervention, special education, and general education in meeting the needs of children with disabilities.

Use of State Improvement Funds. An SEA must also describe how funds will be used for systemic-change activities and the strategies the state will use to address identified needs, including how the state will change policies and procedures to address systemic barriers;

hold LEAs and schools accountable for educational progress of children with disabilities; provide technical assistance to LEAs and schools; and address the identified needs for inservice and preservice preparation of professionals and paraprofessionals, including how the state will:

- Prepare general and special education personnel with needed content knowledge and the collaborative skills (including how the state will work with other states on common certification criteria);
- Prepare professional and paraprofessionals in early intervention personnel in needed content knowledge and collaborative skills;
- Work with institutions of higher education and other entities to ensure they develop the capacity to support quality professional development programs that meet state and local needs;
- Work to develop collaborative agreements with other states for joint support and development of programs to prepare personnel;
- Work in collaboration with other states to address the lack of uniformity and reciprocity in the credentialing of teachers and other personnel;
- Enhance the ability of teachers and others to use strategies to address the conduct of children with disabilities that impedes learning;
- Acquire and disseminate educational research findings to school personnel and adopt promising practices, materials, and technology;
- Recruit, prepare, and retain qualified personnel that are underrepresented in the fields of general and special education, and related services;
- Ensure that the plan is integrated with other professional development plans and activities; and
- Provide for joint training of parents, general and special education teachers, and related services personnel.

An SEA must also describe strategies that will address identified systemic programs needs (including shortages of qualified personnel), how the state will disseminate results of the local capacity-building and improvement projects, how the state will address improving results for children with disabilities in the geographic areas of greatest need; and how the state will regularly assess which strategies have been effective.

Professional Development Fund Requirement. An SEA that receives State Program Improvement Grants is required to use not less than 75% of funds to ensure that there are enough general education, special education, and related service personnel who have the skills and knowledge necessary to meet the needs of children with disabilities, or to work with other states on common certification criteria. If a state can demonstrate that it has the personnel needed, the state may use not less than 50% of the funds for these purposes.

Subpart 2: Coordinated Research, Personnel Preparation, Technical Assistance, Support, and Dissemination of Information

Comprehensive Plan. Under Subpart 2, the Secretary is authorized to develop and implement a plan for activities designed to enhance the educational and related services of children with disabilities. The Secretary must consult with individuals with disabilities, parents of children with disabilities, appropriate professions, and representatives of SEAs, LEAs, institutions of higher education, private schools, and others in developing the plan.

Grants for Activities. A new program authorizes grants for SEAs, LEAs, institutions of higher education, any other public agency, private nonprofits, outlying areas, Indian tribes, or for-profit organizations, for activities to enhance the provision of education, related services, transition, and early intervention services to children with disabilities under Parts B and C. Projects must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the project. The Secretary must ensure funds are for activities that are designed to benefit children with disabilities, their families, or the personnel employed to work with them or to benefit other individuals with disabilities. Priorities will be given to projects that:

- Address one or more of the following: age ranges, disabilities, school grades, types of educational placements or early intervention environments, types of services, content areas (such as reading), or effective strategies for helping children with disabilities learn appropriate behavior;
- Projects that address the needs of children based on the severity of their disability;
- Projects that address the needs of: low-achieving students, underserved populations, children from low-income families, children with limited English proficiency, unserved and underserved areas, particular types of geographic areas, or children whose behavior interferes with their learning and socialization;
- Projects to reduce inappropriate identification of children, particularly among minority children;
- Projects that are carried out in particular areas of the country, to ensure broad geographic coverage; and
- Any activity that is expressly authorized in Chapters 1 or 2.

Additional Requirements for Projects. The Secretary may require a recipient of the grant to share in the cost of the project, to prepare research and evaluation findings and products in formats for specific audi-

ences, to disseminate the findings and products, and to collaborate with other recipients.

Panel to Evaluate Applications for Projects. A standing panel is established to evaluate applications for projects. The panel will include representatives of institutions of higher education that have programs of personnel preparation, individuals who design and carry out programs of research targeted at the improvement of special education, individuals who have recognized experience and knowledge necessary to integrate and apply research findings to improve results for children with disabilities, individuals who administer programs for children with disabilities, individuals who prepare parents of children with disabilities to participate in making decisions about the education of their children, individuals who establish policies that affect the delivery of services to children with disabilities, parents of children with disabilities, and individuals with disabilities. Individuals can serve on the panel for no more than 3 consecutive years, unless the Secretary deems it necessary. The Secretary may use not more than 1% of the funds under this subpart to pay for non-Federal administrative support related to the management of applications.

Reservation of Funds for the Secretary. The Secretary is authorized to use up to 20% of funds available under either Chapters 1 or 2 to carry out activities or combinations of activities across all of the authorities of Chapters 1 and 2, namely: research; personnel preparation; parent training and information; technical assistance and dissemination; technology development, demonstration, and utilization; or media services.

Funds to Address Children from Minority Backgrounds and for HBCUs. The Secretary will, as appropriate, require an application for a grant to demonstrate how the needs of children with disabilities from minority backgrounds will be addressed. The Secretary will also ensure that at least 1% of funds will be used for outreach and technical assistance to Historically Black Colleges and Universities (HBCUs) and to institutions of higher education with minority enrollments of at least 25%.

Special Funding Requirements. The legislation specifies a certain level of funds be appropriated to address the following needs: $12,832,000 to address the needs of children with deaf-blindness; $4 million to address the postsecondary, vocational, technical, continuing and adult education needs of individuals with deafness; and $4 million to address the needs of children with an emotional disturbance, and those who are at risk of developing an emotional disturbance. A provision indicates that if the total amount appropriated to carry out activities related to research, personnel preparation, and coordinate technical assistance and dissemination sections is less than $130 million, the amounts will be ratably reduced.

Chapter 1: Improving Early Intervention, Educational, and Transitional Services and Results for Children with Disabilities Through Coordinated Research and Personnel Preparation

Research and Innovation. The Secretary is required to make competitive grants to improve the practices of professionals and others providing services to children with disabilities and to improve the educational results for children with disabilities; to address the special needs of preschool-aged children and infant and toddlers with disabilities, including those at-risk of having substantial developmental delays; to address the specific programs of overidentification and underidentification of children with disabilities; to develop and implement effective strategies for addressing inappropriate behavior of students with disabilities in schools; to improve secondary and postsecondary education and transitional services for children with disabilities; and to address the range of needs of children with disabilities who need significant levels of support to maximize their participation and learning in school and in the community. Specific authorized activities are listed under New Knowledge Production, Integration of Research and Practice, and Improving the Use of Professional Knowledge.

- **New Knowledge Production.** The Secretary is required to support activities that lead to the production of new knowledge through activities that will: expand understanding of the relationships between learning characteristics of children with disabilities and their diverse backgrounds; develop or identify innovative effective, and efficient curricula designs, instructional approaches, and strategies; advance the design of assessment tools and procedures that will accurately and efficiently determine the special needs of children with disabilities, especially within the context of general education; study and promote improved alignment and compatibility of general and special education reform; advance the design, development, and integration of technology, assistive technology devices, media, and materials; improve designs, processes, and results of personnel preparation for personnel who provide services to children with disabilities through the acquisition of information on, and implementation of, research-based practices; and advance knowledge about the coordination of education with health and social services.
- **Integration of Research and Practice.** The Secretary is required to support activities that integrate research and practice, including activities that support state systemic-change and local capacity-building and improvement efforts, including: (a) model demonstration projects to apply and test research findings to determine the usability and effectiveness of research

findings; (b) activities to demonstrate and apply research-based findings to facilitate systemic changes; (c) activities to promote and demonstrate the coordination of early intervention and educational services for children with disabilities with services provided by health, rehabilitation, and social service agencies; and (d) activities to identify and disseminate solutions that overcome systemic barriers to effective and efficient service delivery.

- **Improving the Use of Professional Knowledge.** The Secretary is required to support activities that improve the use of professional knowledge, including activities that synthesize useful research and other information relating to the provision of service to children with disabilities; analyze professional knowledge bases to advance an understanding of the relationships, and the effectiveness of practice relating to the provision of services; ensure that research and related products are in appropriate formats for distribution; enable professionals, parents of children with disabilities, and other persons, to learn about and implement the findings of research and successful practices developed in model demonstration projects; and conduct outreach, and dissemination information relating to successful approaches to overcoming systemic barriers to the effective and efficient delivery of services, to personnel who provide services.

Balance Among Activities and Age Ranges in Research and Innovation Grants. The Secretary must ensure that there is an appropriate balance among knowledge production, integration of research and practice, and use of professional knowledge and across all age ranges of children with disabilities.

Personnel Preparation. This section requires the Secretary to make competitive grants to help address state-identified needs for qualified personnel in special education, related services, early intervention, and general education, to work with children with disabilities and to ensure that the personnel have needed skills and knowledge. Specific authorized activities are listed for (a) preparing personnel to work with low-incidence disabilities; (b) leadership preparation; (c) projects of national significance; and (d) preparing personnel to work with children with high-incidence disabilities.

- **Low-Incidence Disabilities.** The Secretary is required to support activities that benefit children with low-incidence disabilities, including: (a) preparing persons who have prior training in educational and other related service fields and are studying to obtain degrees, certificates, or licensure that will enable them to assist children and infants and toddlers with disabilities in meeting their objectives; (b) providing personnel from various disciplines with interdisciplinary training; (c) preparing personnel in the innovative uses and application of technology; (d) preparing personnel who provide services to children with visual impairments to teach and use Braille; (e) preparing personnel to be qualified educational interpreters; and (f) preparing personnel who provide services to children with significant cognitive disabilities and children with multiple disabilities.
- **Leadership Preparation.** The Secretary is required to support leadership preparation activities, including preparing personnel at the advanced graduate, doctoral, and postdoctoral levels of training to administer, enhance or provide services for children with disabilities; and providing interdisciplinary training for various types of leadership personnel.
- **Projects of National Significance.** The Secretary is required to support activities that are of a national significance and have broad applicability, including:
  - developing and demonstrating effective and efficient practices for preparing personnel to provide services, including practices that address any needs identified in the state's improvement plan;
  - demonstrating the application of significant knowledge derived from research and other sources in the development of programs to prepare personnel;
  - demonstrating models for the preparation of, and interdisciplinary training of, special education and general education personnel to enable them to acquire needed collaboration skills and to achieve results that meet challenging standards (particularly within the general education curriculum);
  - demonstrating models that reduce shortages of teachers and personnel from other relevant disciplines, through reciprocity arrangements between states that are related to licensure and certification;
  - developing, evaluating, and disseminating model teaching standards for persons working with children with disabilities;
  - promoting the transferability of licensure and certification;
  - developing and disseminating models that prepare teachers with strategies for addressing the conduct of children with disabilities that impede learning;
  - institutes that provide professional development that addresses the needs of children with disabilities to teachers or teams of teachers, and where appropriate, to school boards and other school personnel;
  - projects to improve the ability of general education teachers, principals and other administrators to meet the needs of children with disabilities;

- developing, evaluating, and disseminating innovative models for the recruitment, induction, retention, and assessment of new, qualified teachers, especially those from underrepresented groups; and
- supporting institutions of higher education with minority enrollment of at least 25% for the purpose of preparing personnel to work with children with disabilities.

- **High Incidence Disabilities.** The Secretary is required to support activities to benefit children with high-incidence disabilities, including: (a) activities undertaken by institutions of higher education, LEAs, and other local entities to improve and reform their existing program to prepare teachers and related services personnel to meet the diverse needs of children with disabilities and to work collaboratively in general education classroom settings and to incorporate best practices and research-based knowledge about preparing personnel; (b) activities incorporating innovative strategies to recruit and prepare teachers and other personnel to meet the needs of areas in which there are shortages of personnel; and (c) activities designed to develop career opportunities for paraprofessionals to receive training as special education teachers, related services personnel, and early intervention personnel.

Requirement for State Involvement in Personnel Preparation Grants. The legislation requires that any application for personnel preparation grants include information demonstrating that the activities described will address needs identified by the state and if the applicant is not an SEA or LEA, information demonstrating that one or more SEAs have engaged in a cooperative effort to plan the project and will cooperate in carrying out and monitoring the project. The Secretary may also require applicants to provide letters from one or more states declaring that the states intend to accept successful completion of the programs as meeting state personnel standards and need personnel in the area or areas in which the applicant proposed to provide preparation.

Personnel Preparation Requirements That Applicants Must Meet State and Professional Standards. The Secretary will only make grants to eligible applicants that meet state and professionally recognized standards for the preparation of special education and related services personnel, if the purpose of the project is to assist personnel in obtaining degrees.

Preferences for Personnel Preparation Grants. The Secretary may give preference to institutions of higher education that are educating general education personnel to meet the needs of children with disabilities in integrated settings and educating special education personnel to work in collaboration with general educators in integrated settings; and give preference to institutions that are successfully recruiting and preparing individuals with disabilities and individuals from groups that are underrepresented.

Personnel Preparation Service Obligation. Each application for a personnel preparation grant must include an assurance that the applicant will ensure that individuals who receive a scholarship will provide special education and related services to children with disabilities for a period of 2 years for every year the assistance was received or repay all or part of the cost of the assistance. For applicants who receive funds for leadership preparation, the applicant must ensure that individuals who receive a scholarship will perform work related to their preparation for a period of 2 years for every year assistance was received or repay all or part of the costs.

Studies and Evaluations. The legislation requires grants to assess the effectiveness of state and local efforts to provide a FAPE to children with disabilities and early intervention services to both infants and toddlers with disabilities and infants and toddlers at risk of having substantial developmental delays. The Secretary is authorized to support studies, evaluations, and assessments, including studies that analyze measurable impact, outcomes, and results achieved by the SEAs and LEAs; analyze state and local needs for professional development, parent training, and other appropriate activities that can reduce the need for disciplinary actions involving children with disabilities; assess services and results for children with disabilities from minority backgrounds; measure services and results for children with disabilities, including longitudinal studies; and identify and report on the placement of children with disabilities by disability category.

- **National Assessment.** The Secretary is required to carry out a national assessment of activities in consultations with researchers, practitioners, parents of children with disabilities, individuals with disabilities and others. The national assessment will examine how well schools, LEAs, SEAs, and other recipients of assistance are achieving the purposes of the legislation.
- **Annual Report.** The Secretary must report annually to the Congress on the findings and determinations resulting from reviews of state implementation.
- **Technical Assistance to LEAs.** The Secretary is required to make grants to LEAs to assist them in carrying out local capacity-building and improvement projects.
- **Authorization of Funds for Studies and Technical Assistance.** The Secretary may reserve up to one half of 1% of the amount appropriate under parts B and C for this part. Half of the funds must be used for technical assistance.

Chapter 2: Improving Early Intervention, Educational, and Transitional Services and Results for Children with Disabilities Through Coordinated Technical Assistance, Support, and Dissemination of Information.

Parent Training and Information Centers (PTICs). There are some changes to the provisions governing grants to parent training and information centers in the new legislation. The Secretary must make at least one award to a parent organization in each state, unless no application from an organization of sufficient quality is received. Required activities now include: (a) helping parents to understand the availability of, and how to effectively use procedural safeguards, including encouraging the use, and explaining the benefits of alternative methods of dispute resolution, such as the mediation process; (b) assisting parents in participating in school reform activities; (c) contracting with SEAs to provide individuals who meet with parents to explain the mediation process to them; and (d) networking with appropriate clearinghouses. Annual reporting requirements are reduced to require the reporting of the number of parents to whom it provided information and training and the effectiveness of strategies that were used to reach and serve parents, including underserved parents.

- **Optional Activities.** PTICs may also provide information to teachers and other professionals, assist students with disabilities in understanding their rights on reaching the age of majority, and assist parents in becoming informed participants in the development and implementation of the state improvement plan.

Community Parent Resource Centers. A new section authorizes grants to local parent organizations to support PTICs that will help ensure that underserved parents of children with disabilities have the training and information they need.

Technical Assistance for PTICs. The new legislation identifies authorized activities that are allowable in the technical assistance the Secretary provides to PTICs.

Coordinated Technical Assistance and Dissemination. The Secretary is required to make grants to provide technical assistance and information through such mechanisms as institutes, regional resource centers, clearinghouses, and programs that support states and local entities in building capacity to improve services and results for children with disabilities and their families.

- **Systemic Technical Assistance.** The Secretary is required to support technical assistance activities relating to systemic change, including: (a) assisting SEAs, LEAs, and other participants in partnerships with the process of planning systemic changes; (b) promoting change through a multistate or regional framework; (c) increasing the depth and utility of information in ongoing and emerging areas of priority needs identified by SEAs, LEAs, and other participants in partnerships; and (d) promoting communication and information exchange among SEAs, LEAs, and other participants in partnerships.
- **Specialized Technical Assistance.** The Secretary is required to support activities relating to areas of priority or specific populations, including activities that: (a) focus on specific areas of high-priority need; (b) focus on needs and issues that are specific to a population of children with disabilities, such as schools and agencies serving children with deaf-blindness and to programs and agencies serving other groups of children with low-incidence disabilities and their families; or (c) address the postsecondary education needs of individuals who are deaf or hard of hearing.
- **National Information Dissemination.** The Secretary is required to support information and dissemination activities, including activities relating to: (a) infants and toddlers with disabilities and their families, and children with disabilities and their families; (b) services for populations of children with low-incidence disabilities, including children with deaf-blindness and targeted age groupings; (c) the provision of postsecondary services; (d) the need for and use of personnel to provide services, and personnel recruitment, retention, and preparation; (e) issues that are of critical interest to SEAs and LEAs, other agency personnel, parents of children with disabilities, and individuals with disabilities; (f) educational reform and systemic change within states; and (g) promoting schools that are safe and conducive to learning.
- **Linking States to Information Sources.** The Secretary may also support projects that link states to technical assistance resources and may make research and related products available through libraries, electronic networks, parent training projects, and other information sources.

Authorization of Appropriations for Part D Activities. The legislation does not authorize a specific level of funds for the Part D activities but instead authorizes such sums as may be necessary for each of the fiscal years 1998 through 2002.

Technology Development, Demonstration, and Utilization, and Educational Media Services. The legislation retains grant authority for technology development and educational media activities in this section. There is no specific level of funds authorized but such sums as necessary are authorized for each of the fiscal years 1998 through 2002.

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- **Technology Activities.** The Secretary is required to make competitive grants to support activities to promote the development, demonstration, and utilization of technology, including activities such as: (a) conducting research and development activities on the use of innovative and emerging technologies; (b) promoting the demonstration and use of innovative and emerging technologies by improving and expanding the transfer of technology from research and development to practice; (c) providing technical assistance to recipients of other assistance, concerning the development of accessible, effective, and usable products; (d) communicating information on available technology and uses of technology to assist children with disabilities; (e) supporting the implementation of research programs on captioning or video description; (f) supporting research, development, and dissemination to technology with universal-design features; and (g) demonstrating the use of publicly-funded telecommunication systems to provide parents and teachers with information and training concerning early diagnosis of, intervention for, and effective teaching strategies for young children with reading disabilities.
- **Educational Media Services.** The required activities include: (a) educational media activities that are designed to be of educational value to children with disabilities; (b) providing video description, open captioning, or closed captioning of television programs, videos, or educational materials through September 30, 2001, and after fiscal year 2001, providing video description, open captioning, or closed captioning of educational, news, and informational television, videos, or materials; (c) distributing captioned and described videos or educational materials through such mechanisms as a loan service; (d) providing free educational materials in accessible media for students with visual impairments in elementary, secondary, postsecondary, and graduate schools; (e) providing cultural experiences through appropriate nonprofit organizations, such as the National Theater of the Deaf, that enrich the lives of children and adults with hearing impairments and increase public awareness and understanding of deafness; and (f) compiling and analyzing appropriate data related to the activities.

Effective Dates. Parts A and B, except for the following, shall take effect upon the enactment of the Act (upon President's signature): Sec. 617 (Administration) shall take effect on October 1, 1997; Sec. 612(a)(4) (IEP) shall take effect on July 1, 1998; Sec. 612(a)(14) (CSPD) shall take effect on July 1, 1998; Sec. 612(a)(16) (Performance Goals and Indicators) shall take effect on July 1, 1998; Sec. 614(d) IEP shall take effect on July 1, 1998, except for paragraph (6), provisions for children with disabilities in adult prisons, which takes effect upon enactment; Sec. 618 (Program Information/Data Collection) shall take effect on July 1, 1998; Sec. 611 and 619 shall take effect beginning with funds appropriated for FY 98.

- Part D—Support Programs: Changes to the support programs go into effect on October 1, 1997, except for the following. Paragraphs 1 and 2 of Sec. 661(g) (Standing Panel and Peer Review Panels) shall take effect on January 1, 1998. Beginning October 1, 1997, the Secretary of Education may use funds appropriated under Part D to make continuation awards for projects that were funded under Sec. 618 and Parts C through G of IDEA as in effect on September 30, 1997.
- Part C (formerly Part H—Early Intervention) shall take effect on July 1, 1998.
- Part I (Family Support Program) is repealed as of October 1, 1998.

Authorization to Continue to Fund Continuation Grants. A provision is included that allows the Secretary to use funds appropriated under Part D to make continuation awards for projects that were funded previously under Parts C through G as in effect on September 30, 1997.

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Resources for Individuals with Disabilities Education Act Public Law 105-17

Government Resources

U.S. Department of Education

Office of Special Education and Rehabilitative Services
600 Independence Avenue, SW
Washington, DC 20202

Federal/Regional Resource Centers

The Federal Resource Center for Special Education (FRC) supports a nationwide technical assistance network that responds quickly to the needs of students with disabilities, especially students from underrepresented populations. The six federally funded Regional Resource Centers (RRCs) provide technical assistance to the State Education Agencies (SEAs) in order to assist each SEA in building its capacity to improve programs for children with disabilities. Current information on research, policies, procedures, and practices concerning the education of children and youth with disabilities is available to the states.

Federal Resource Center for Special Education
Academy for Educational Development
1875 Connecticut Ave., NW
Washington, DC 20009
(202) 884-8215 (Voice); (202) 884-8200 (TTY)
E-mail: frc@aed.org
URL: http://www.dssc.org/frc

Great Lakes Area Regional Resource Center (GLARRC)
Center for Special Needs Populations
700 Ackerman Pl., Suite 440
Columbus, OH 43202
(614) 447-0844 (Voice)
(614) 447-8776 (TTY)
E-mail: marshall.76@osu.edu
URL: http://www.osc.edu/CSNP/GLARRC.HTML
Service area includes: IL, IN, MI, MN, OH, PA, WI

Mid-South Regional Resource Center (MSRRC)
Interdisciplinary Human Development Institute
126 Mineral Industries Building
Lexington, KY 40506-0051
(606) 257-4921 (Voice); (606) 257-2903 (TTY)
E-mail: msrrc@ihdi.uky.edu
URL: http://www.ihdi.uky.edu/projects/MSRRC
Service area includes: DC, DE, KY, MD, NC, SC, TN, WV, VA

Mountain Plains Regional Resource Center (MPRRC-UTAH)
Utah State University
1780 N. Research Parkway, Suite 112
Logan, UT 84321
(801) 752-0238 (Voice); (801) 753-9750 (TTY)
E-mail: latham@cc.usu.edu
URL:
http://www.educ.drake.edu/rc/RRC/MPRRC.html
Service area includes: CO, IA, KS, MO, MT, ND, NE, SD, UT, WY,
Bureau of Indian Affairs (BIA)

Northeast Regional Resource Center (NERRC)
Trinity College of Vermont, McAuley Hall
208 Colchester Avenue
Burlington, VT 05401-1496
(802) 658-5036 (Voice); (802) 860-1428 (TTY)
E-mail: NERRC@aol.com
URL: http://interact.uoregon.edu/wrrc/nerrc/index.htm
Service area includes: CT, MA, ME, NH, NJ, NY, RI, VT

South Atlantic Regional Resource Center (SARRC)
Florida Atlantic University
1236 North University Drive
Plantation, FL 33317
(954) 473-6106 (Voice)
E-mail: sarrc@acc.fau.edu
URL: http://www.fau.edu/divdept/sarrc/
Service area includes: AL, AR, GA, FL, LA, MS, NM, OK, TX, Puerto Rico, U.S. Virgin Islands

Western Regional Resource Center (WRRC)
College of Education, University of Oregon
Eugene, OR 97403-1268
(541) 346-5641 (Voice); (541) 346-0367 (TTY)
E-mail: wrrc@oregon.uoregon.edu

URL: http://interact.uoregon.edu/wrrc/wrrc.html

Service area includes: AK, AZ, CA, HI, ID, NV, OR, WA, American Samoa, Federated States of Micronesia, Guam, Republic of the Marshall Islands, the Republic of Pilau, and the Commonwealth of the Northern Marianas.

State Education Departments

Each state Department of Education is responsible for special education and related services programs in its state for preschool, elementary, and secondary aged children.

Other Resources

Center for Law and Education
197 Friend Street, 9th Floor
Boston, MA 02114
(617) 371-1166 (Voice/TTY)

Children's Defense Fund (CDF)
25 E Street, NW
Washington, DC 20001
(202) 628-8787 (Voice)
E-mail: cdfinfo@childrensdefense.org
URL: http://www.childrensdefense.org

CDF is a private, nonprofit organization supported by foundations, corporations, and individuals. The goal of CDF is to educate the nation about the needs of children and to encourage preventive investment in children before they get sick, drop out of school, suffer family breakdown, or get into trouble.

The Council for Exceptional Children (CEC)
1920 Association Drive
Reston, VA 20191-1589
(703) 620-3660 (Voice); (703) 264-9446 (TTY)
E-mail: cec@cec.sped.org
URL: http://www.cec.sped.org/home.htm

The Council for Exceptional Children (CEC) is the largest international professional organization committed to improving educational outcomes for individuals with exceptionalities. Each of CEC's 17 Divisions develops professional programs and publications geared to respond to areas of particular need and specialization.

Disability Rights Education and Defense Fund (DREDF)
2212 Sixth Street
Berkeley, CA 94710
(800) 466-4232 (Voice/TTY); (510) 644-2555 (Voice)
E-mail: dredfca@aol.com

DREDF is a national nonprofit organization run primarily by persons with disabilities to achieve the goals of the disability rights movement. It monitors legislative and educational efforts and conducts training and research programs. DREDF has been very active in the training of persons with disabilities and their families in the application of their rights under laws such as the Individuals with Disabilities Education Act (IDEA), the Americans with Disabilities Act (ADA), and Section 504 of the Rehabilitation Act of 1973.

ERIC Clearinghouse on Disabilities and Gifted Education (ERIC EC)
The Council for Exceptional Children (CEC)
1920 Association Drive
Reston, VA 20191-1589
(800) 328-0272 (Voice); (703) 264-9474 (Voice)
(703) 264-9449 (TTY)
E-mail: ericec@cec.sped.org
URL: http://www.cec.sped.org/ericec.htm

Judge David L. Bazelon Center for Mental Health Law
1101 15th Street, NW, Suite 1212
Washington, DC 20005-5002
(202) 467-5730 (Voice); (202) 467-4232 (TTY)
E-mail: bazelon@nicom.com
URL: http://www.bazelon.org

Through litigation, public policy advocacy, and technical support for local lawyers and other advocates, the Judge David L. Bazelon Center for Mental Health Law works to define and protect the rights of adults and children who rely on public services and to ensure their equal access to health and mental health care, education, housing, and employment.

National Association for the Education of Young Children (NAEYC)
1509 16th Street, NW
Washington, DC 20036-1426
(800) 424-2460 (Voice); (202) 232-8777 (Voice)
E-mail: aauj82d@prodigy.com

As the largest professional association of early childhood educators, with more than 95,000 members,

NAEYC is committed to improving the quality of early childhood programs for children birth through age 8. A division of NAEYC, the National Academy of Early Childhood Programs, administers a national accreditation system for center-based, early childhood programs. Another division of NAEYC, the National Institute for Early Childhood Professional Development, provides resources and services to improve early childhood professional preparation and development.

National Association of Private Schools for Exceptional Children (NAPSEC)
1522 K Street, NW, Suite 1032
Washington, DC 20005-1202
(202) 408-3338 (Voice)
E-mail: NAPSEC@aol.com
URL: http://www.spedschools.com/napsec.html

NAPSEC is a nonprofit association whose mission is to promote excellence in educational opportunities for children with disabilities by enhancing the role of private special education as a vital component of the nation's educational system. NAPSEC provides a free referral service for parents, educators, counselors, and others seeking placement options for students with disabilities. Callers contacting NAPSEC about placement will be provided with a list of current NAPSEC member schools that may be appropriate placements for the student. The individual requesting the information can then contact the schools directly for more information.

National Association of Protection and Advocacy Systems, Inc. (NAPAS)
900 Second Street, NE, Suite 211
Washington, DC 20002
(202) 408-9514 (Voice); (202) 408-9521 (TTY)
E-mail: hn4537@handsnet.org

The National Association of Protection and Advocacy Systems, Inc. (NAPAS) is a voluntary membership organization of state programs advocating for the rights of people with developmental disabilities. The membership has four major components: (a) Protection and Advocacy for People with Developmental Disabilities (PADD); (b) Protection and Advocacy for Individuals with Mental Illnesses (PAIMI); (c) the Client Assistance Program (CAP), which advocates for people seeking vocational rehabilitation services; and (d) Protection and Advocacy for Individual Rights (PAIR), which helps people with disabilities who are not eligible for other Protection and Advocacy services, but who need legal representation or related assistance.

National Association of State Directors of Special Education (NASDSE)
1800 Diagonal Road, Suite 320
Alexandria, VA 22314
(703) 519-3800 (Voice); (703) 519-7008 (TTY)
E-mail: specialed@nasdse.org

NASDSE provides services to the professionals who have state-wide responsibility for the education of exceptional children. NASDSE has developed numerous products that are geared to education administrators and cover such areas as management, training, legislation, and implementation of legislation.

National Coalition for Parent Involvement in Education (NCPIE)
1201 16th Street, NW, Box 39
Washington, DC 20036
(202) 822-8405, ext. 53
E-mail: ferguson@iel.org
URL: http://www.ncpie.org

National Early Childhood Technical Assistance System (NEC*TAS)
Frank Porter Graham Child Development Center
University of North Carolina
500 NationsBank Plaza
137 E. Franklin Street
Chapel Hill, NC 27514
(919) 962-2001 (Voice); (919) 966-4041 (TTY)
E-mail: nectasta.nectas@mhs.unc.edu
URL: http://www.nectas.unc.edu

NEC*TAS assists states and others in developing multidisciplinary, coordinated, culturally sensitive, and comprehensive services for children with special needs (birth through 8 years old) and their families. Although the main focus of NEC*TAS is providing support to states, technical assistance is also available to projects in the Early Education Program for Children with Disabilities (EEPCD). Services to clients include: needs assessments, individualized technical assistance, publications in print and electronic formats, meetings, and information referral.

National Information Center for Children and Youth with Disabilities (NICHCY)
P.O. Box 1492
Washington, DC 20013-1492
(800) 695-0285 (Voice/TTY)
(202) 884-8200 (Voice/TTY)
E-mail: nichcy@aed.org
URL: http://www.nichcy.org

National Institute on Disability and Rehabilitation Research (NIDRR)
330 C Street, SW
Washington, DC 20202
(202) 205-8134 (Voice); (202) 205-9136 (TTY)
URL:
http://www.ed.gov/officer/OSERS/NIDRR/nidrr.html

Technical Assistance Alliance for Parent Centers (The Alliance)

Parent training and information centers in each state provide training and information to parents of infants, toddlers, children and youth with disabilities, and professionals who work with parents. This assistance helps parents to participate more effectively with professionals in meeting the educational needs of children and youth with disabilites. To reach the parent training and information center in your state, you can contact the Technical Assistance Alliance for Parent Centers (the Alliance), which coordinate the delivery of technical assistance to the parent training and information centers through four regional centers located in California, New Hampshire, Texas, and Ohio.

The Alliance's coordination office is located at
PACER Center
4826 Chicago Avenue South
Minneapolis, MN 55417-1098
(888) 248-0822 (toll-free); (612) 827-2966 (voice); (612) 827-7770 (TTY)
E-mail: alliance@taaliance.org
URL: http://www.taaliance.org

Internet Resources

Web Sites

U.S. Department of Education
http://www.ed.gov/offices/OSERS/IDEA/
The Council for Exceptional Children (CEC)
http://www.cec.sped.org/pp-menu.htm

The Federal/Regional Resource Centers
The Federal Resource Center (FRC) for Special Education offers contact information for all the OSEP Technical Assistance and Dissemination projects. The regional resource centers (RRCs) provide technical assistance to SEAs, state departments of education, and state departments of special education.
http://www.dssc.org/frc/textonly/idea.htm
http://interact.uoregon.edu/wrrc/IDEA1997Information.html

Listservs

EBD-IDEA97TALK
Effect of IDEA Amendments on people who work with children and youth with emotional and behavioral problems
Subscription address: majordomo@lists.air-dc.org
Post messages to: ebd-idea97talk@lists.air-dc.org